DOCUMENT RESUME

ED 177 249 UD 019 804

AUTHOR	Doyle, Richmond; And Others
TITLE	Civic Crisis - Civic Challenge: Police-Community Relations in Memphis.
INSTITUTION	Tennessee State Advisory Committee to the United States Commission on Civil Rights.
SPONS AGENCY	Commission on Civil Rights, Washington, D.C.
PUB DATE	Aug 78
NOTE	138p.
EDRS PRICE	MF01/PC06 Plus Postage.
DESCRIPTORS	City Officials; Civil Rights; Community Attitudes; *Community Problems; Federal Government; *Government Role; *Law Enforcement; *Minority Groups; Police; *Police Community Relationship; *Public Policy; Racial Discrimination
IDENTIFIERS	*Tennessee (Memphis)

ABSTRACT

This report identifies and analyzes the problems that exist between the community and police in Memphis and offers recommendations toward their solution, focusing on a review of allegations of police misconduct. Major issues addressed include: (1) police policies and practices that affect relations with the community; (2) the Memphis community's perspective of police treatment of citizens, especially minority citizens; and (3) past efforts to improve police-community relations in Memphis, including the involvement of the Federal government. Evidence is presented to show that misconduct on the part of some Memphis police goes virtually unpunished by either police or city and local officials. Numerous recommendations for the improvement of police-community relations are directed toward the community at large as well as local and police officials. Recommendations are also made concerning the responsibility of the Federal government in preventing and combating the systematic denial of rights, including discrimination on the basis of race, in the administration of justice by local law enforcement officials. (Author/EB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED177249

Civic Crisis—Civic Challenge: Police-Community Relations in Memphis

—A report prepared by the Tennessee Advisory Committee to the U.S. Commission on Civil Rights

August 1978

ATTRIBUTION:
The findings and recommendations contained in this report are those of the Tennessee Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

RIGHT OF RESPONSE:
Prior to the publication of a report, the State Advisory Committee affords to all individuals or organizations that may be defamed, degraded, or incriminated by any material contained in the report an opportunity to respond in writing to such material. All responses have been incorporated, appended, or otherwise reflected in the publication.

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

UD019804

LETTER OF TRANSMITTAL

TENNESSEE ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
August 1978

MEMBERS OF THE COMMISSION
Arthur S. Flemming, *Chairperson*
Stephen Horn, *Vice Chairperson*
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

Louis Nuñez, *Acting Staff Director*

Sirs and Madam:

The Tennessee Advisory Committee submits this report, *Civic Crisis—Civic Challenge: Police-Community Relations in Memphis*, as part of its responsibility to advise the Commission about civil rights problems within this State.

This report deals with city and police policies and practices that affect police-community relations; the Memphis community's perspective of police treatment of citizens, especially minority citizens; and past efforts to improve police-community relations in Memphis, including the involvement of the Federal Government. It focuses specifically on the review of allegations of police misconduct, both by the police department itself and external sources as well.

Information on which this report, its findings, conclusions, and recommendations is based was gathered during a 20-month investigation by the Tennessee Advisory Committee that included the October 8–9, 1976, open meeting and the May 9, 1977, Commissioner's hearing. The Advisory Committee is grateful for the assistance the Commission provided by holding a hearing in Memphis. Without it, this study could not have been completed. Much of the data presented in this report were provided by city and police officials in response to subpena of the Commission.

Overwhelming evidence that police misconduct, ranging from harrassment and intimidation to outright brutality, perpetrated by some Memphis police goes virtually unpunished by either police or city and local officials is presented in this report. The effect of such injustice—on the citizen, the image, and economy of the city and the ability of the good police officer to maintain order—is both negative and far-reaching.

This Advisory Committee developed numerous recommendations for the improvement of police-community relations based on the extensive findings reported in this study. They are directed to the community at large, as well as local elected and appointed officials and police officials.

As forcefully presented by an analysis of the situation in Memphis, the Advisory Committee finds that both the scope and implementation of Federal responsibility nationally with regard to the denial of rights in the administration of justice by law enforcement and other officials needs to be reappraised. An examination of the existing Federal responsibility and efforts dictates that, despite the basic constitutional rights and the level of Federal funding involved, there is precious little in the way of Federal remedies to prevent and combat the systemic denial of rights, including discrimination on the basis of race, in the administration of justice by local law enforcement officials. Accordingly, the Advisory Committee urges the U.S. Commission on Civil Rights to conduct a comprehensive study of the Federal responsibilities in this regard and forward its findings and recommendations to the President and Congress designed to ensure that appropriate Federal mechanisms and procedures are available to prevent as well as combat systemic denial of constitution rights by law enforcement authorities in the administration of justice.

We urge you to concur with our recommendations and through your Regional Advisory Committee, and especially its Tennessee members, to monitor police-community relations in Memphis and assist in its improvement in any way possible.

Sincerely,

Samuel B. Kyles,
Chairperson
Tennessee Advisory Committee

MEMBERSHIP TENNESSEE ADVISORY COMMITTEE TO THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Rev. Samuel B. Kyles, *Chairperson*
Memphis

Rosetta I. Miller-Carr
Memphis

Lucy Covington*
Franklin

I.T. Creswell, Sr.
Nashville

Mattie R. Crossley
Memphis

Sara Moore Greene
Knoxville

Larry K. Hardesty*
Signal Mountain

Maeola L. Killebrew
Memphis

Daniel A. Powell
Memphis

Richard J. Ramsey
Chattanooga

Edward E. Redditt
Memphis

Mary Schaffner
Nashville

Harrison Paul Violet
Lawrenceburg

Patricia A. Welch
Nashville

* No longer a member of the Advisory Committee.

THE UNITED STATES COMMISSION ON CIVIL RIGHTS

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent, bipartisan agency of the executive branch of the Federal Government. By the terms of the act, as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin, or in the administration of justice: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

THE STATE ADVISORY COMMITTEES

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Advisory Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to: advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private organizations, and public officials upon matters pertinent to inquiries conducted by the State Advisory Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Advisory Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

ACKNOWLEDGMENTS

The Tennessee Advisory Committee wishes to thank the staff of the Commission's Southern Regional Office in Atlanta for coordinating the investigation of police-community relations in Memphis and preparing this report.

The investigation was the principal staff assignment of Richmond Doyle, equal opportunity specialist, Mark Schneider, regional attorney, and Katie Harris, researcher-writer. Portia Raby, Joan Harper, and Cecilia Matthews provided support throughout the investigation. All worked under the supervision of Bobby Doctor, Director of the Southern Regional Office.

The staff of the Publications Support Center was responsible for final preparation of the document for publication.

Contents

PREFACE 1
1. INTRODUCTION 3
2. CITY OF MEMPHIS 5
  Governmental Structure
  Economy
3. MEMPHIS POLICE DEPARTMENT 9
  Structure
  Personnel
  Training
    Structure
    Curriculum
    Inservice Training
  Police Associations
    Memphis Police Association
    Afro-American Police Association
4. PAST EFFORTS TO IMPROVE POLICE-COMMUNITY RELATIONS 19
  NAACP Hearings
  City Council Investigation
  New York City Police Department Study
  U.S. Department of Justice Study and Negotiations
  Employment Discrimination Litigation
5. COMMUNITY PERSPECTIVE 31
  Memphis Branch of the NAACP
  Memphis Urban League
  American Civil Liberties Union of Tennessee (ACLU/T)
  Memphis and Shelby County Legal Services Association
  Public Defender Offices
  Individual Complaints of Police Misconduct
    Individual Complainants
  Community Leaders
    Business Leaders
    Religious Leaders
    Media
    Professional Bar Associations
  Elected and Appointed Officials
    City Council Members
    Director of Police
    Mayor of Memphis
6. POLICE MISCONDUCT—INTERNAL AND EXTERNAL REVIEW 54
  Community Perspective of Problem
  Nature of Internal and External Review
    Internal Review
    External Review
  Memphis Police Department Internal Affairs: Police Misconduct Investigation and Discipline
    MPD Internal Investigation Process

MPD Internal Discipline Process
Bargaining Agreement With City of Memphis
Polygraph Examination
Identity of Complainant
Effective Use of Citizen Complaints
Reception of Citizen Complaints
Publicizing Complaint Disposition
Analysis of Disciplinary Actions Taken
Response of Director Chapman
Statistical Overview
Conclusion
External Review of Police Misconduct
Administrative Review
Legal Review
7. USE OF DEADLY FORCE 80
8. FEDERAL FUNDING AGENCIES: CIVIL RIGHTS RESPONSIBILITIES 84
Introduction
Level of Federal Funding
Law Enforcement Assistance Administration
Office of Revenue Sharing
Discrimination in the Administration of Justice
9. FINDINGS AND CONCLUSIONS 87
General
Memphis Police Department
Police Misconduct
Internal Affairs: Process for Investigation and Discipline of Police Misconduct
Factors Accounting for Failure of MPD Internal Affairs Process
Impact of Memphis Police Association Bargaining Agreement with the City of Memphis
Substantial Improvements Required
Use of Deadly Force
Community Relations Training and Structure
Public Officials and Community Leaders
The Mayor of Memphis
The City Council
Director of Police
Civil Service Commission
District Attorney General
Community Organizations and Leaders
Civil Rights Organizations
The Business Community
The Religious Community
Federal Involvement and Responsibilities
Office of the U.S. Attorney
U.S. Department of Justice, Civil Rights Division
Office of Revenue Sharing and the Law Enforcement Assistance Administration
U.S. Commission on Civil Rights
10. RECOMMENDATIONS 101
Community Action

Police-Community Relations Committee
  Committee Composition
  Committee Functions
  Committee Structure
Comprehensive Survey of the Memphis Police Department
Memphis Police Department Policy and Procedures
  Internal Affairs Process
  Restricted and Specifically Defined Use of Deadly Force
  Police-Community Relations Training and Structure
City Council
Office of the District Attorney General
Bar Association
U.S. Commission on Civil Rights
  Commission Study
  Selected Areas of Study
  U.S. Department of Justice Action

APPENDICES

A. List of Documents Subpenaed By the U.S. Commission on Civil Rights From E. Winslow Chapman, Director of Police Services; John Holt, Acting Chief of Police; Joseph Sabatini, Personnel Officer, City of Memphis, and Henry R. Evans, Chief Administrative Officer, City of Memphis 110
B. Official Responses to the Report (In chronological order of receipt): E.B. Adair, President, Afro-American Police Association, Ltd.; Joe Kent, President, Memphis Police Association; Lewis W. Taylor, Director, Office of Civil Rights Compliance, Law Enforcement Assistance Administration, U.S. Department of Justice; Wyeth Chandler, Mayor of Memphis and E. Winslow Chapman, Director of Police Services 112

EXHIBITS

1. Rank of Black Officers 10
2. Organizational Chart 11
3. Commissioned Personnel By Job, Race, and Sex 13
4. Citizen Complaints of Police Misconduct Investigated By IAB Category 56
5. MPD Disciplinary Actions By IAB Category Resulting from IAB Investigations of 1126 Complaints 57
6. Percentages of MPD Disciplinary Actions By IAB Category Resulting From IAB Investigation of 1126 Complaints 58
7. Report of Persons Killed in Shootings by Memphis Police, 1969–1976 81

9

PREFACE

In February 1976 a 16-year-old boy was killed by Memphis police with a shotgun blast as he fled the scene of a burglary on his bicycle. Candy and food had been taken from a warehouse. The boy was not armed. Police officers involved were routinely suspended during the 2-day departmental investigation that followed. They were subsequently reinstated[1] and the "right" (provided by State law) of Memphis police to use whatever force necessary to stop a suspected felon was reinforced.

Two months later, a headline in the *Commercial Appeal* read "2 Officers Fired For Killing Dog." Chief W.O. Crumby (chief of police until February 1977) fired the men involved because he was not convinced that the lives of the officers had been endangered by the dog, and the officers had used excessive force in arresting the dog's owner (witnesses said officers had thrown the man against a glass door.)[2]

Had the unarmed boy on a bicycle endangered the lives of the officers who killed him? Why could well-trained, properly conditioned officers of the law not apprehend the youth, who was 20 feet from them when he was killed? Do the Memphis police have a higher regard for the life of a dog than for the life of a black youth who may have stolen candy and food? Black citizens of Memphis and other concerned Memphians asked these questions. They have been asking similar questions about their city police for a number of years.

In 1976 members of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights agreed that police-community relations in Memphis, especially the relations between the police and the black community, was the most critical civil rights problem in Tennessee. The Advisory Committee agreed to review police department practices, citizen allegations of police harassment, intimidation, and outright brutality and to provide recommendations to appropriate authorities for improving community relations.

In May 1976 the Advisory Committee and staff of the Commission's Southern Regional Office announced that such an investigative study would be undertaken and that an open meeting to discuss the issues involved would be held in the fall.[3]

The actual research and data gathering were initiated August 9, 1976, when staff of the Southern Regional Office met with Mayor Wyeth Chandler, discussed the study, and asked for the city's cooperation. Full cooperation was promised.

Six weeks later, the information requested from the city and from the police department had not been provided. City and police officials told Commission staff they had orders from the mayor's office not to talk with Commission employees or members of the Advisory Committee. Mayor Chandler in a public statement, termed the Commission study "nothing more or less than a political witch hunt." He said he regarded "anyone involved with the Civil Rights Commission as a bunch of weirdos," and said the city didn't "need their help or them in our city."[4]

Part of the Advisory Committee's investigation included an open meeting to gain the views of police, city officials, citizens activists, representatives of the media, and the business communities that would present a balanced picture of police-community relations in Memphis. The mayor's refusal to cooperate made it impossible for the Advisory Committee's study to be completed at the open meeting held October 8 and 9, 1976, in Memphis. Of the 17 police and city officials invited to speak at the meeting, only 2 appeared—newly appointed Director of Police E. Winslow Chapman and then City Council Member Walter James Cody, who is currently U.S. Attorney for the Western District of Tennessee. During questioning by the city council prior to his appointment, Mr. Chapman had promised Mr. Cody that he would cooperate with the Advisory Committee study.[5]

To complete its work in Memphis, the Advisory Committee requested the U.S. Commission on Civil Rights to hold a formal public hearing[6] and thereby invoke its subpena powers to compel the appearance of police and city officials and to attain information from the police department about the training of its officers, its internal investigation procedures, current employment and promotional procedures, and other relevant information. Never in the conduct of its business in eight Southern States, including the completion of four other studies of police-community relations, had the Commission on Civil Rights met such resistance to the fulfillment of its statutory duties as imposed in Memphis, Tennessee.

The Commissioners were implored by the Advisory Committee, as well as numerous citizen groups in Memphis, to hold a hearing as soon as possible. They agreed to do so. In preparation for the public hearing, a team of attorneys and researchers spent more than 5 weeks in Memphis interviewing potential hearing witnesses and talking with Memphians about police-community relations in their city.

On May 9, 1977, Commission Chairman Arthur S. Flemming and Commissioner Murray Saltzman presided over the public hearing in Memphis. Twenty-eight witnesses, including Mayor Chandler, responded under oath to questions posed by the Commissioners and their attorneys. The city surrendered documents in response to Commission subpenas. A full list of those documents is found in the appendix.

Thus, this report of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights is based on information gathered at the October 1976 open meeting, testimony given under oath during the Commission's May 1977 hearing, documents supplied by the city in response to the Commission's subpenas, and interviews with scores of Memphians. Throughout this report, unless otherwise noted, police statistics were furnished by the Memphis Police Department in response to subpenas issued by the U.S. Commission on Civil Rights.

Notes to Preface

1.*Commercial Appeal*, Feb. 9, 1976.

2.*Commercial Appeal*, Apr. 16, 1976.

3.Open Meeting of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights, Memphis, Tenn., Oct. 8–9, 1976 (hereafter referred to as Open Meeting Transcript.)

4.*Commercial Appeal*, Sept. 24, 1976, p. 25.

5.Open Meeting Transcript, p. 433.

6.Hearing before the U.S. Commission on Civil Rights, Memphis, Tenn., May 9, 1977.

Chapter 1

INTRODUCTION

A truism regarding police-community relations,[1] often lost in the bitter debate of accusation and counter-accusation, is that their improvement is the responsibility of, and is beneficial to, the entire community. Even if fairer treatment of minority groups were the sole consideration, police departments would have an obligation to attempt to achieve and maintain good police-community relations. In fact, much more is at stake. Police-community relationships have a direct bearing on the character of life in our cities, and on the community's ability to maintain stability and to solve its problems. At the same time, the police department's capacity to deal with crime depends to a large extent upon its relationship with the citizenry. Indeed, no lasting improvement in law enforcement is likely in this country unless police-community relations are substantially improved.[2]

Such improvement logically manifests itself in several ways. Public confidence induces cooperation with the police. This not only aids the police in combating crime but also improves the image of the department, which promotes the individual police officer's self-image and aids the department in attracting and keeping qualified police personnel. In turn, the image of the community is enhanced, giving the city a reputation as an enjoyable and safe place to visit and an attractive place to live and work.

The police department, as the responsible and organized public service agency, obviously must have the primary responsibility. Beyond this, however, the community must accept the civic responsibility of providing the human and financial resources necessary to aid the department in its proper function. An unequivocal commitment by elected and appointed officials to improve and maintain police-community relations is essential, as is constant scrutiny of those officials by the citizenry to ensure their continued action. Community leaders—business, professional, religious—must actively pursue their responsibility for educating themselves and the community at large as to the nature of the problems that exist and use their collective resources toward solving those problems. Those most adversely affected by poor police-community relations, particularly the black community, must collectively and reasonably be able to express their demands for good police services without fear of abuse or unlawful conduct.

Another truism, much less palatable than the one discussed above, is that police-community relations in Memphis are not good. A significant number of Memphians, notably the poor and members of the black community, express not only a lack of confidence in the Memphis Police Department, but also outright fear and distrust. Elected and appointed officials have been unable, and in many instances unwilling, to exercise their responsibilities for improving the situation. Community leaders and the majority of the white community, isolated from the more dramatic and demonstrative results of the problems, have largely ignored them and, therefore, their responsibilities as well.

There have been efforts in the past to investigate and ameliorate the problems that exist in Memphis.[3] That these efforts have been less than successful may be attributed more to the recalcitrance of responsible officials and community leaders and public indifference than to the limitations of the efforts themselves. This report, which seeks to identify and analyze the problems that exist in Memphis and offer recommendations toward their solution, is obviously only a limited tool for use in the improvement of police-community relations. The challenged to achieve and maintain good police-community relations clearly lies with the community itself.

It is the belief of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights that while several problems existing in Memphis have a disproportionate impact on certain groups (particularly the black community), it is essential that the entire community, whether from a sense of conviction or practicality, acknowledge and ad-

12

dress its responsibility to improve police-community relations. Further, it is important for the Memphis community to recognize that the constructive exercise of this civic responsibility will benefit every Memphian.

Conversely, the entire Memphis community must fully appreciate that without the firm resolve and positive action necessary to remove the obstacles that continue to preclude good police-community relations, Memphis will continue to be a community plagued by the chronic problems that result from the abdication of civic responsibility.

Notes to Chapter 1

1.The term police-community relations as used in this report is a generic one encompassing: the police department and elected and appointed officials responsible for its operation; the people for whom the police department provides services, including diverse groups with special interests (e.g. minority community, business community, labor organizations, religious groups); and the nature of the relationships between them. The term is neutral and is intended to include the totality of factors germane to the interrelationship of the police and the community.

2.U.S., President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* (1967), p. 144.

3.*Commercial Appeal*, July 19, 1976, p. 6.

Chapter 2
CITY OF MEMPHIS

The city of Memphis is home for 675,000 persons,[1] 38.9 percent of whom are black.[2] The city's population has continued to increase since both the 1960 and the 1970 census. The continuous expansion of the city boundaries accounts for the city's growth. The figures in table 1 show that approximately 146 square miles, including a population of almost 175,000, has been annexed since 1960.[3]

The annexation in 1969 took more citizens into the city than any annexation since 1944. The communities of Whitehaven and East Memphis, whose residents are almost exclusively white, were annexed in 1969—just one year after the racial violence that followed the assassination of Dr. Martin Luther King, Jr., in Memphis.

In response to a question about the racial composition of Memphis, City Councilman Robert B. James stated that annexation was the reason blacks did not constitute a majority in the city. The 10-year council veteran and chair of the council law enforcement committee said:

> Well, the only reason that they [blacks] probably don't have the majority is because we have annexed some rather large white sections in the last 10 years. We have annexed Frayser, oh, 15 years ago and Whitehaven about 8 or 9 years ago and Bartlett...Raleigh, and Scenic Hills, which is all white, and fragments of other parts within the last years. The balance has been maintained by that annexation—not for that purpose, but we are unique in that we have laws that enable Tennessee cities to annex without referendum.[4]

Memphis is the hub of a 105-county area—a major retail center for portions of the five States (Kentucky, Missouri, Arkansas, Mississippi, and Alabama) which bound western Tennessee. Known popularly as the "mid-South area," these neighboring States account for the majority of Memphis inmigration. The rural areas of eastern Arkansas, northern Mississippi, and the western counties of Tennessee alone accounted for over 38,000 persons who moved into Memphis and Shelby County between 1965 and 1970.[5]

Governmental Structure

The mayor-council form of government was adopted in Memphis in 1968. The mayor and 13 council persons serve 4-year terms. Seven of the council members are elected from districts and six are elected at-large. The next municipal election will be held in 1979.

The mayor is responsible for the administration and supervision of all divisions, boards, agencies, offices, and employees. He appoints all departments heads, including the director of police services, subject to confirmation by the city council. The mayor is empowered to veto actions of the city council, although the council may override his veto with a simple majority vote. Memphis "strong mayor" form of government is best summed up by the statement of the current mayor, Wyeth Chandler, "I run the city."[6]

The 13 city council members are part-time officials; they are paid $6,000 annually plus expenses. The council is charged with adopting ordinances, policies, and programs; establishing the annual operating and capital improvement budgets; setting the tax rate; and making amendments to or appropriations from the city budget. Two staff persons assist the council—an administrative assistant and a research analyst. In short, the legislative power of the city rests with the council. City ordinance 1852 clearly states that the right of the council to deal with administrative matters is limited:

> Except for the purposes of inquiry or investigation the Council and its members shall deal with the administrative officers under the Mayor's direction and the employees of the administrative department solely through the Mayor's office.[7]

The city charter does give the council (formerly called a commission) the power to issue subpenas in the conduct of its business:

> Every member of the board of commissioners [city council] of the City of Memphis shall have the power to administer oaths and affir-

TABLE 1

Year	Square Miles Annexed	Estimated Population Annexed
1960–65	31.89	31,212
1966	5.82	1,315
1967	.72	23
1968	10.20	21,899
1969	27.56	63,274
1970–76	70.01	57,127

Source: City of Memphis, Official City Map (1976).

> mations, and...shall have the power to issue subpenas, to compel by subpena the production of books and papers, accounts, and the attendance of witnesses, and to take and hear testimony concerning any matter or thing pending before such commissioners of the City of Memphis.[8]

Each year the council members elect a chairperson, who is empowered to appoint members to the working committees of the council. There are committees on transportation, education, law enforcement, the budget. Reportedly, the committees are only as active as the committee chair makes them.[9]

The law enforcement committee is chaired by Robert James; Patrick Halloran and A.D. Alissandratos are members. In the past, the committee has dealt with problems that affect the police department and has proposed city ordinances to remedy the problems. For example, an ordinance to discourage the installation of faulty burglar alarm systems which caused numerous false alarms resulted from work of the committee.[10] Although it meets 12 to 18 times a year, in the 2 years that Mr. Halloran has been a member it has not discussed allegations of police misconduct.[11]

In 1972 the council invoked its investigatory powers, provided in the city charter, and appointed a three-man team to inquire into allegations of police misconduct. The council did not, however, use its subpena power to attain all police records needed for the investigation. Two of the city council members characterized the study as "incomplete" because Mayor Chandler refused to release certain information.[12] Details of the council investigation are in chapter 4.

The city council chair, Oscar Edmonds, described the official relationship of the council and the Memphis Police Department as "budgetary." The police department budget is reviewed by the council each year on a line-item basis. Mr. Edmonds stated that the council had not substantially revised the budget request in 1976.[13]

Prior to confirmation of the mayor's appointment of E. Winslow Chapman as director of police services in September 1976, the city council bowed to the wishes of the committee on law enforcement and referred the nomination to that committee. The unusual move was requested by committee member Patrick Halloran so that a full, public discussion on Mr. Chapman's plans for the police department could be held.[14] Such an open discussion, coming just 1 month prior to the Tennessee Advisory Committee's open meeting on police-community relations, could have been requested by the city council itself. In the weeks prior to Mr. Chapman's confirmation by the council (with a vote of nine to three and one council member absent) all newpapers in Memphis had reported allegations of police harassment and brutality and that police had burned intelligence files when citizens were seeking access to them. Yet the full city council was not interested in a lengthy discussion with Mr. Chapman about his attitudes toward police work.

Given the facts that the city council has the power to make amendments to or appropriations from the city budget, to issue subpenas, conduct investigations, and confirm or deny appointments of the mayor, it has considerable power. Thomas Todd, a council member since 1968, said that most appointments of the mayor were "rubber stamped" by the council.[15]

Economy

The economic potential of Memphis has not been realized. Prominent Memphians and the city's leading daily paper have spoken and written about barriers to a progressive, viable Memphis. Henry Evans, chief administrative officer of Memphis, told Lions Club members in July 1977 that cities make progress when political leaders are willing to make tough decisions and when business leaders are willing to "put the interests and needs of the city ahead of their own private interests." He said Memphis did not have that kind of business leadership.[16]

Mr. Evans' statement followed the defeat of a proposal for the city and the county to issue general obligation bonds to finance the building of a $25 million convention hotel in downtown Memphis. The idea was proposed by the Community Resource Coalition, a group of government and business leaders who believe a luxury hotel downtown would enhance the city's ability to draw conventions. Efforts to attract a private builder of such a hotel have been unsuccessful. The Cook Convention Center, with a seating capacity of 15,000, was used only 114 days during fiscal year 1976. The occupancy rate among all downtown hotels in 1976 was 39.3 percent.[17]

Numerous proposals for revitalizing the downtown area have been or are being made. James McGehee, president-elect of the Memphis Area Chamber of Commerce was quoted in the August 11, 1977, *Commercial Appeal* as saying that Memphis is "the most overstudied, underachieving city of comparable size in the southern United States."[18] Despite the extensive studies aimed at revitalization, however, downtown Memphis is still deserted after 5:00 p.m. The appraised value of downtown property has decreased more than $4 million in the last 4 years. The "Mid-America Mall," cobblestoned areas in the shopping district that are closed to autos, is spotted with vacant buildings. Approximately three blocks west, deserted and dilapidated warehouses overlook the picturesque Mississippi River. The once famous Beale Street, a national historic landmark where W.C. Handy "gave birth to the blues," is a lifeless, dark, and dirty street. The Beale Street National Historic Foundation is actively seeking redevelopers. City and county officials are studying a proposal of the Center City Commission (a joint city-county commission) to form a corporation that would provide funding for downtown redevelopment ventures. If successful, it would be funded over a period of 3 years by $6 million from the private sector, $10 million in capital improvements paid for by the city and county, over $42 million from Federal sources, and $20 million in industrial revenue bond sales by the corporation.[19]

Edgar Bailey, president and chair of the board of Leader Federal Savings and Loan Association and chair of the Community Resource Coalition told Rotarians in August 1977 that Memphis was in a "crisis" and described the city as a "hobbling giant."[20] Mr. Bailey suggested that a comprehensive study, financed by the public and private sectors, be undertaken to identify problems and propose solutions. Commitments that the recommendations would be supported would be required for the study to be effective, Mr. Bailey said. He doubted, however, that business people and local politicians would make those commitments.

Compared to the rural areas of Arkansas, Mississippi, and Tennessee that surround Memphis, the city does have more opportunity for employment, health care, and education. Manufacturing plants claim a substantial portion of the Memphis work force (17 percent in 1975)[21] Firestone Tire and Rubber, Carrier Air Conditioning, and International Harvester are three of several plants that employ over 3,000 persons each. The Naval Air Station, defense depot, and Memphis Medical Center are also major employers. Eight colleges and universities are located in the Memphis area.[22]

Unemployment is especially high among blacks—75 percent among teenagers and 34 percent among all blacks. The population growth of Memphis has been stagnant since 1972 with outmigration balanced by births. "Zero" new jobs have been created since 1974[23] and the median income in the Memphis standard metropolitan statistical area is lower than that in the Nashville, Knoxville, or Chattanooga areas—$3,811 for whites and $2,475 for blacks.[24] An economist with a brokerage firm in Memphis summed up economic development of Memphis in this way:

> If you do not consider the blacks as important, then you don't need to worry about economic development. [Memphis] is a delightful place for white, Anglo-Saxon, upper middle-class people to live. The question is, can that last for long if you don't think about the blacks?[25]

The economy of the city is weak. In May 1977 Mayor Chandler analogized that race relations in Memphis were "more or less like our financial situation; we are not in good shape, but certainly we are not alone there. I feel like it's improved."[26] At that time the city was projecting a $12 million deficit for fiscal year 1977 and layoffs for 516 city employees unless new revenue was found. Efforts to increase local sales tax by .5 percent failed. To balance the budget, Mayor Chandler recommended and the city council adopted an increase in sewer and garbage collection fees and the delay of four construction projects to free $1.5 million in Federal revenue sharing money. When the fiscal year ended, however, the city announced a $1.5 million surplus.[27]

The *Commercial Appeal*, Memphis leading daily newspaper, called the surplus "hard to swallow." The threatened layoffs, cuts in service, increased fees, and "other maneuverings that created the illusion of crisis" left a political aftertaste that was "bitter" to Memphians.[28]

Joe Kent, president of the Memphis Police Association (MPA) which negotiates a contract with the city on behalf of its members, was surprised at the surplus.[29] MPA negotiations with the city had been concluded when the surplus was announced and officers were given a $56 a month raise.[30]

Though the city obviously needs a permanent increase in its revenues, many of its taxing policies remain regressive. Samuel Hollis, 1977 president of the Memphis Area Chamber of Commerce, cited a $7.50 maximum tax on new cars sold in Memphis as an example.[31] Sales tax, garbage and sewer fees are equally regressive—economically deprived persons are taxed at the same rates as the economically privileged.

Notes To Chapter 2

1.City of Memphis, "1976 Offical City Map of Memphis, Limited Bicentennial Edition" (1976), index, not paginated (hereafter cited as Official City Map).

2.Memphis Area Chamber of Commerce, "Memphis Community Data," October 1976, not paginated.

3.Official City Map, p. 1.

4.Robert B. James, testimony before the U.S. Commission on Civil Rights, hearing, Memphis, Tenn. May 9, 1977, transcript, p. 295 (hereafter cited as Hearing Transcript).

5.Memphis Area Chamber of Commerce, "Memphis and Mid-South Population," vol. IV, no date, p. 13.

6.Interview in Memphis, Tenn., Apr. 29, 1977.

7.Memphis, Tenn., Charter §1, as amended (Supp. No. 18, 1968).

8.*Id.*, Supp. No. 11, 1968.

9.A.D. Alissandratos, city councilperson, interview, Memphis, Tenn., Apr. 27, 1977 (hereafter cited as Alissandratos Interview).

10.James Testimony, Hearing Transcript, p. 266.

11.Interview in Memphis, Tenn., May 4, 1977.

12.Alissandratos Interview; and Thomas H. Todd, Jr., interview in Memphis, Tenn., May 3, 1977 (hereafter referred to as Todd Interview).

13.Interview in Memphis, Tenn., Apr. 21, 1977.

14.*Commercial Appeal*, Sept. 14, 1976.

15.Todd Interview.

16.*Commercial Appeal*, July 30, 1977, p. 4.

17.Ibid., Aug. 7, 1977, p. B-2.

18.Ibid., Aug. 11, 1977, p. 17.

19.Ibid., July 30, 1977, p. 13.

20.Ibid., Aug. 3, 1977, p. 37

21.Memphis Area Chamber of Commerce, "A Profile of Mid-America's Big New City: Memphis," no date.

22.Memphis Area Chamber of Commerce, "Memphis Community Data," October 1976.

23.*Commercial Appeal*, Aug. 3, 1977, p. 37.

24.U.S., Department of Commerce, Bureau of the Census, *Detailed Characteristics, Tennessee*, 1970 Census of Population, no. PC(1)-D44, p. 900.

25.*Commercial Appeal*, Aug. 7, 1977, p. B-6

26.Mayor Wyeth Chandler testimony, Hearing Transcript, p. 350.

27.*Commercial Appeal*, Aug. 4, 1977, p. 1.

28.Ibid., Aug. 6, 1977, p. 6.

29.Ibid.,Aug. 5, 1977, p. 3.

30.Ibid., July 31, 1977, p. G-2.

31.Interview in Memphis, Tenn., Apr. 22, 1977.

Chapter 3

MEMPHIS POLICE DEPARTMENT

On May 12, 1827, the first constable was appointed in Memphis. By 1870 the police force had a staff of 91, consisting of 2 captains, 4 sergeants, 2 roundsmen, 34 day policemen, 41 night policemen, 2 station house keepers, 4 special force officers, and 2 clerks. In 1874 the town council adopted a resolution requesting the mayor to employ on the police force: 10 percent Italians, 20 percent Irish, 20 percent German, and 50 percent white and colored Americans and other nationalities. A specific resolution asking the police board to put 20 "colored" men on the force lost by a vote of 16 to 3.[1]

In the spring of 1948 efforts to increase black participation in city affairs were spearheaded by members of the black community and the news media. The police commissioner and a delegation of police and city officials toured several southern cities and studied methods of supervising black police officers. At the time, 51 cities in 10 Southern States had hired black officers.[2]

Following the tour, nine black men were hired by the department and completed the required 2-week training program. Since none of the current supervisors within the department wanted responsibility for the black officers, a white patrol officer was taken from his squad car and promoted to lieutenant to supervise the black officers. Roll call for the black officers was held in the department garage. They were told to arrest only blacks and assigned to the Beale Street area.[3] In 1951 five additional black officers were hired by the department, but it was not until the summer of 1952 that black officers were officially sworn in.[4]

A black officer was temporarily assigned to the detective division as a homicide investigator in 1954, but prior to that time all black officers were assigned to walking detail in black neighborhoods. In 1958 this officer was permanently transferred to the homicide bureau. After 16 years of roll call in the garage, black and white officers were integrated for roll call. In 1964 the first black police lieutenant was named, and 2 years later squad cars were integrated and a black officer became a field commander. Black officers were not promoted above lieutenant until 1973 when two black officers became captains and one was promoted to night commander of the homicide bureau.[5]

In November 1976 a black officer, who had joined the force in 1951 in the second group of black officers recruited by the department, was elevated to precinct commander and became the first black precinct commander in the city's history.[6]

The recruitment and promotion of black officers by the Memphis Police Department has been a slow and laborious process and until the 1970s their representation was negligible. In 1972 there were only 93 black police officers and in 1977 there were approximately 193. Black officers are overwhelmingly relegated to the lower ranks. (See exhibit 1.) The first woman joined the department in 1952, when 20 women were hired as school crossing guards—3 were black.[7]

Structure

As discussed in chapter 2, Memphis has a mayor-city council form of government with the mayor serving as the chief executive officer. The director of police services is appointed by the mayor and can be suspended or removed from office at the pleasure of the mayor. During the past 5 years (1972–1977) there have been four police directors. The director of police currently appoints the deputy chiefs and chief inspectors. The other ranks are filled through civil service hiring procedures.

An organizational chart, exhibit 2, illustrates the department's hierarchical structure at the time the Tennessee Advisory Committee conducted this study. Rank levels within the department are: patrolman, sergeant, lieutenant, captain, inspector, chief inspector, deputy chief, chief, and director.

In June 1977 Police Director Chapman reorganized the department. There are now two appointed (non-civil service) deputy directors (one

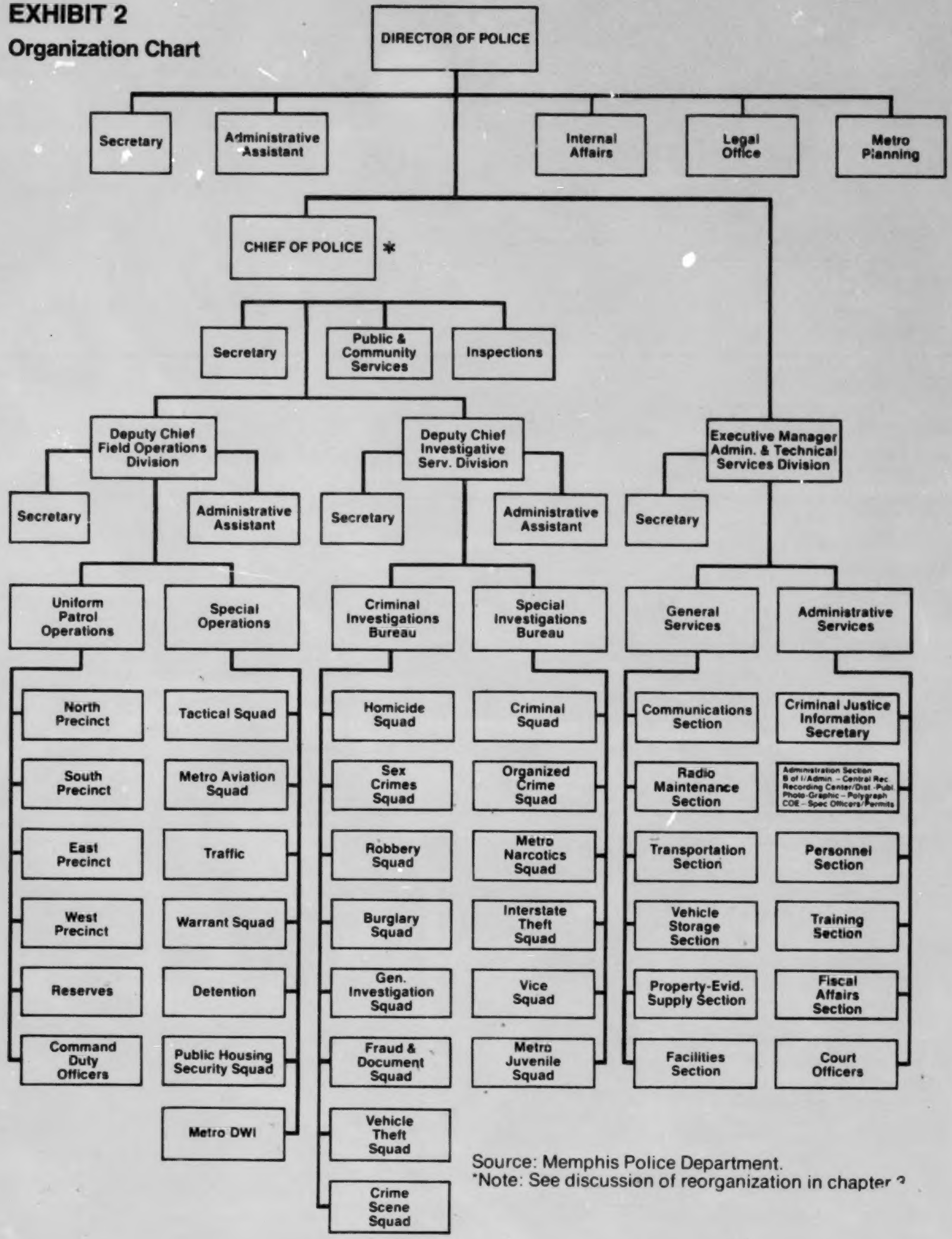
EXHIBIT 1

Rank of Black Officers

Year	Inspector	Captain	Lieutenant	Detective/ Sergeant	Patrolman
1948					9
1953				4	4
1958				4	4
1963			5	3	40
1969			4	13	50
1974		2	5	17	89
1977	1	1	6	19	166

Source: "Historical Sketch of the Black Police Officer"

EXHIBIT 2
Organization Chart



Source: Memphis Police Department.
*Note: See discussion of reorganization in chapter 3

for operations and one for administration) and the position of chief has been eliminated.[8] There remains some legal question whether the position of chief (ostensibly a civil service position) can be eliminated without a referendum. The city attorney has not yet rendered an opinion on the question. Police Director Chapman said, "All promotions are acting because of a Justice Department bar to promotions pending the resolution of several law suits in Federal court regarding past police promotions."[9]

The MPD maintains some special job assignments, such as planning and administrative assistance, which are usually made by appointment of the director.

The central downtown police building houses most of the administrative, clerical, communication, and investigative personnel. Two units, however—internal affairs and planning—are located in a private office building. There are currently four operational precincts designated north, south, east, and west.

Personnel

The Memphis Police Department has an authorized strength of 1,293 commissioned personnel. Exhibit 3 illustrates the job assignment, race, and sex of commissioned personnel as of April 29, 1977. The total numbers of commissioned personnel, by race and sex, and the percentages based on total commissioned personnel are shown in table 2. The total population of the city of Memphis is 675,000, of which 38.9 percent is black and approximately 51 percent is female.

A special group of police officers known as police service officers hold "limited commissions." Of 23 police service officers, 21 are black, including 6 black women, and 2 are white males. Police service officers are not included in the count of commissioned personnel, but in the department's count of civilian personnel.[10] The officers are assigned exclusively to public housing developments under a program known as Security of Neighbors and Property or SNAP.

With their limited commissions, the police service officers have authority only on the premises of public housing developments. Developments that had histories of disturbances were selected. The officers wear the same uniforms as a full commissioned officer with the exception of a collar emblem; they carry guns and drive police cars. Unlike full commissioned officers, the police service officer may not carry his or her gun while off duty.[11]

Charles Conway, executive assistant director for operations of the Memphis Housing Authority, is an enthusiastic supporter of the SNAP program. Vandalism and disturbances in the public housing developments where police service officers are assigned have decreased significantly since the program was begun in 1974, when Jay Hubbard was director of police.[12] The police department is administratively responsible for the officers who were paid with Federal grant money (from the Comprehensive Employment Training Act) until June 30, 1977, when the MPD began paying for the program.[13]

The requirement that police officers have at least 2 years college education (a requirement instituted in the early 1970s) was waived for police service officers. It was hoped that special officers could be recruited from residents of the public housing developments, but according to Mr. Conway, that did not prove possible. The special officers received 2 weeks training at LeMoyne Owen College, and firearms training was provided by the MPD itself.[14]

According to Mr. Conway, when the program was begun, police service officers were eligible to have the MPD reimburse them for college tuition if they chose to complete 2 years of college work preparatory to becoming qualified as full-commissioned officers. Mr. Conway was not aware, however, of any police serivce officer who had ever requested such reimbursement.[15]

Under current departmental regulations, a police service officer would not be eligible to serve on the regular police force unless he or she completed 2 years of college. The special officers remain in their "dead end" jobs, receiving a salary lower than that of a full-commissioned officer while facing the dangers of public housing developments known to have disturbances.

Male and female officers of all ethnic groups work fixed shift assignments while assigned patrol duties. The department will usually field 13 one-officer patrols and 33 two-officer patrols during the day shift, 34 two-officer patrols during the night shift, and 16 two-officer patrols on an overlapping 7 p.m. to 3 a.m. shift. The department

EXHIBIT 3

Commissioned Personnel by Job, Race, and Sex *

Job Description	Male White	Male Black	Male Other	Female White	Female Black	Female Other	Not Specified
Chief of Police	2	0	0	0	0	0	0
Chief of Field Oper	1	0	0	0	0	0	0
Chief Inspector Police	4	0	0	0	0	0	0
Inspector	9	1	0	0	0	0	0
Captain	48	1	0	0	0	0	0
Lieutenant	144	6	0	2	0	0	0
Sergeant	239	18	0	4	1	0	0
Helicopter Pilot	10	0	0	0	0	0	0
Police Technician	12	0	0	0	0	0	0
Patrolman II	556	145	1	26	19	0	0
Patrolman I	3	1	0	0	1	0	0
Chf. Pol. Radio Disp.	1	0	0	0	0	0	0
Asst. Chf. Pol. Radio Disp.	1	0	0	0	0	0	0
Sr. Pol. Radio Disp.	5	0	0	0	0	0	0
Chf. Pol. Radio Technician	1	0	0	0	0	0	0
Sr. ID Technician	1	0	0	0	0	0	0
ID Technician Lt.	2	0	0	0	0	0	0
Law Enforcement Plan	2	0	0	0	0	0	0
Latnt. Fngr. Prnt. Exmr.	2	0	0	0	0	0	0
Police Legal Advisor	1	0	0	0	0	0	0
Total	1044	172	1	32	21	0	0

---

* As of April 29, 1977
Source: Memphis Police Department

TABLE 2

Commissioned	Total	Percent
BM	172	13.5
BF	21	1.7
WM	1,045	81.3
WF	32	2.5
BM & BF	193	15.2
BF & WF	53	4.0
BM & BF & WF	225	17.7

maintains one patrol wagon on each shift and 3, 5, and 3 two-officer accident investigation units on the day, evening, and night watches, respectively.[16]

Training

The Police Academy was established in 1959 under the leadership of Fire and Police Commissioner Claude A. Armour and Chief of Police James C. MacDonald. Prior to the opening of the Armour Training Center as the official training arm of the department, rookie officers had to gain most experience in field duties. The only classroom training consisted of a 2-week recruit course conducted in a small upstairs room at the now defunct Barksdale Police Station. Refresher courses and specialized schools were nonexistent.[17]

Today, the Memphis Police Academy is located in a two-story building, complete with a police library. Located on the academy's 18-acre campus are the largest firearms range in the State with the most up-to-date marksmanship training course, a physical education building with a well-equipped gymnasium for physical conditioning and self defense traning, a tactical purpose building, and a variety of other buildings.[18]

Structure

The Memphis Police Training Academy provides several broad areas of study:[19]

1. Administration of Justice—the structure of the criminal justice system and the framework of law and responsibility within which the officer operates.
2. Firearms Training—proper use of firearms, mechanics of arrest, self-defense methods, crowd and riot control, and handling of prisoners.
3. Human Behavior—understanding the origins and causes of crime, probing the attitudes and behaviors of offenders, appreciating the complex makeup of our social community and its many varied people with their needs and aspirations.
4. Introduction to Law Enforcement—introduction to the profession of law enforcement, the police code of ethics, departmental plans and procedures, and personnel matters.
5. Investigation—analysis of the discovery of reporting of crime to the police, followed by investigation of victims, witnesses, and suspects, resulting in case preparation and testimony during prosecution of the arrested offender in court before the jury.
6. Law—consideration of constitutional principles and "due process of law" as specifically applied to various investigative and prosecutive stages of criminal justice, including arrest, search and seizure, interrogation, identification procedures, bail, and others.
7. Patrol Procedures—special skills, techniques, investigative procedures, and emergency actions to protect lives and property.
8. Physical Training and Defensive Tactics—arrestee control techniques, defensive tactics, physical conditioning, and transporting prisoners.
9. Traffic Enforcement—vehicle codes, accident investigation, enforcing traffic regulations by summons and arrest, and instilling an image of and respect for driver safety in the public.

Curriculum

The State of Tennessee mandates a minimum of 240 hours of basic police training for certification of officers. Although there is no specific content requirement, the State does require that all police academies advise them of the curriculum content. Lt. William Turner, chief training officer of the MPD, was unaware of such a requirement.[20] However, none of the officers completing the training at the academy have failed to receive certification.

Although there is no formal curriculum statement, the course descriptions do indicate the areas covered in the 9-week training period. The following illustrates the general content of the 480-hour curriculum.[21]

Course Descriptions

Administration of Criminal Justice—21 hours
Attorney General's Office
Alcohol, Tobacco, and Firearms
Federal Bureau of Investigation
United States Secret Service
Shelby County Sheriff's Office
Juvenile Court
Internal Affairs
Courtroom Demeanor and Testifying
Mock Court
Firearms—80 hours
Firearms Orientation
Legal Aspects of Firearms, Liability, and Judgment Factors
Principles of Marksmanship and Range Exercise
Support Weapons
Crowd Control
Special Tactics

Examination

Human Behavior—36 hours

Factors Underlying Community Conflict
Urban Problems
Race Relations
Human Relations
Psychology
Crisis Intervention
Criminology
Memphis Alcohol and Drug Council

Introduction to Law Enforcement—8 hours

Organization and Rank Structure of the Memphis Police Department
History of Law Enforcement
Overview of the Criminal Justice System
Professional Ethics and the Police Image

Investigation—45 hours

Overview of Crimes Against Property
Overview of Crimes Against Persons
Preliminary Investigation
Interviews and Interrogation
Collection and Preservation of Evidence
Narcotics and Dangerous Drugs
Fraud and Document
Sex Crimes Investigation
Burglary Investigation
Police Records and Recording Center
Basic Report Writing
Field Reports
Practical Problems in Report Writing
Arrest Reports
Vice Activities

Law—43 hours

Laws of Arrest
Probable Cause for Arrest
Search and Seizure
Rules of Evidence
City Ordinances
Police Liability
Criminal Law
Constitutional Law and Civil Rights
Warrants
Substantive Law
Law Review

Other Topics—40 hours

Public Speaking
First Aid
Welcome Into Law Enforcement
Tour of Police Facilities and Courts
Community Relations Bureau
Public Relations Bureau
Notebook Construction and Note-taking
Introduction Speeches
Memphis Police Association
Police Wives Association
Police Fraternal Organizations
Media Relations Panel

Patrol Procedures—56 hours

Local Geography
Dog Squad Orientation
Helicopter Squad Orientation
Aggressive Patrol
Felony in Progress Calls
Prowler Calls
Visual Perception and Recognition of Suspects
Jail Procedures
Departmental Field Forms
Introduction to Police Patrol
Field Observation and On-the-job Training
Radio Communications
Police Killings
Extremist Activities

Physical Training and Defensive Tactics—67 hours

Arrestee Control Techniques (handcuffing)
Baton Drill
Defensive Tactics
Physical Conditioning
Physical Training Orientation

Program Administration—44 hours

Orientation
Personnel Forms
Credit Union
Staff Time
Graduation and Rehearsal
Briefing on Assignments
I.D. Cards
Rules and Regulations, Discipline and Deportment
Examinations

Traffic—40 hours

Traffic Law
Traffic Enforcement Action
Use of Radar Equipment
Officer-Violator Relations
Detection and Apprehension of DWIs
Traffic Accident Investigation
Traffic Direction and Control
Emergency and Pursuit Driving
Stopping and Approaching Vehicles
Police Role in Highway Safety
Traffic Accident Reporting Manual

The emphasis on firearms and self-defense is obvious. Approximately 30.6 percent (16.6 percent firearms, 13.9 percent self-defense) of the curriculum is devoted to these activities, while only 7.5 percent is devoted to human behavior. In addition, the description of human behavior courses taught indicates that only 10 hours, or 2.08 percent of the total 480 hours, are devoted to specific human relations instructions.

Inservice Training

According to Lt. William Turner, chief training officer, only inservice training is currently conducted at the academy. Due to city budget constraints there have been no recent recruit classes. Lieutenant Turner stated that inservice training has improved considerably since the State law enforcement planning commission began to require 40 hours of training per year for all sworn personnel. The planning commission receives and disburses money from the Law Enforcement Assistance Administration, a Federal agency, which requires 40 hours inservice training of all police departments receiving LEAA funds. Lieutenant Turner said there has never been an inservice training program involving community, race, or human relations.[22] Inservice training programs for 1977 were no exceptions. Programs were provided on labor and management relations, telephone security, use of the polygraph, eyewitness identification, epilepsy, civil liability, and a variety of other topics, none of which dealt with race or human relations.

When interviewed by Commission staff, Lieutenant Turner said that topics for inservice training programs were based on suggestions made by the police officers themselves on a questionnaire provided for that purpose.[23]

While it is a good policy to permit the officers to help identify the areas of study where they feel the need for additional training, it seems quite reasonable that police administrators should, given their expertise beyond that of the regular police officer, play a key role in identifying training needs. In view of the continual conflict during 1976, and before, between the Memphis police and the black community (which had clearly been brought to light by the October 1976 open meeting of the Tennessee Advisory Committee, as well as extensive media coverage of the issue), it is inconceivable that not one inservice training program planned for 1977 would deal with human relations.

Lieutenant Turner said that recruit and inservice training teaches an officer how to work with people regardless of their race or sex.[24] His statement implies that special training for dealing with different groups of people is not needed. Lieutenant Turner was uncertain of the number of minority persons who were involved in teaching in the training programs. He recalled that Edward Redditt, a former police officer who serves as a member of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights, had taught some courses on a part-time basis in the past and that a minority man, a professor at Memphis State University, currently teaches some courses. No women instructors are used.[25]

Police Associations

There are two organizations that represent the interests of police officers. One, the Memphis Police Association (MPA), is the bargaining unit for all persons on the sworn force. The other, the Afro-American Police Association (AAPA), is composed of about 100 black officers on the sworn force but is not an official entity for negotiating contracts.

Memphis Police Association

The Memphis Police Association was chartered in 1972 and has a membership of approximately 1,100 out of a sworn force of 1,270. Sgt. Joseph Kent, MPA president in May 1977 at the time of the Commission's hearing, stated that the MPA was established to protect rank and file police officers from the poor and capricious management practices they had been subjected to in the past, as well as to increase salary levels.[26] Since July 1975 the city has paid the salaries of both the MPA president and vice president.

A prime example of poor management cited by Sergeant Kent was the manner in which police officers had been subjected to discipline. According to Sergeant Kent, there were few, if any, safeguards to protect the officer from capricious disciplinary action. Formerly, the only recourse for an officer was to retain private attorney as protection from capricious disciplinary action. Now the MPA automatically provides legal representation for an officer who has been dismissed or suspended for more than 10 days. Such disciplinary actions may be appealed by the officer to the board of the civil service commission. In addition to legal representation before the board, the MPA may vote to provide legal representation to an officer in both civil and criminal litigation. The MPA provides automatic legal services for an MPA member who may be tried in municipal court on a misdemeanor charge.[27]

Another major problem cited by Sergeant Kent as leading to the formation of the MPA was the lack of promotional opportunity. Sergeant Kent said there had been no promotions within the MPD for the last 7 years, although MPD records disprove that. (See discussion at beginning of chapter 3.) He stated that the number of sergeants on the force is disproportionately high. MPD records show 262 on a total force of 1,270 (see exhibit 3). He alleged that many sergeants had been promoted to that rank through a "good 'ol boy" system of favoritism prior to the institution of the merit system. The result, according to Sergeant Kent, is that there is virtually no way a patrolman can be promoted to sergeant, regardless of merit, because of the overload of "dead weight" sergeants.[28]

According to Sergeant Kent, the MPA membership has a large representation of black officers, including 95 percent of those who belong to the Afro-American Police Association.[29]

Afro-American Police Association

The Afro-American Police Association (AAPA) was chartered in June 1973. Eddie Adair, president and a sergeant in the homicide division of the MPD, stated that it was organized to improve working conditions and opportunities for its 120 black members. Although the AAPA is not a bargaining unit, it does have access to the city administration to discuss matters that concern its members. Principally the AAPA represents its members in three areas: (1) disciplinary actions, (2) job assignments, and (3) promotions. In 1976 the organization filed a law suit against the MPD alleging discrimination in job assignments and promotions.[30]

Sergeant Adair, a 9-year veteran of the MPD, had been president of the AAPA approximately 22 months. He stated that he and Sgt. Kent, president of the MPA, have a good relationship and often collaborate on problems of common interest. At the time of the Commission hearing, they were working together closely because the city and the union (MPA) were about to begin negotiations on a new contract.

Sergeant Adair stated that the biggest problem confronting black officers is unequal treatment by the civil service commission board. Sergeant Adair said that once a black officer has been dismissed for some infraction, it is unlikely that he or she will be reinstated by the civil service commission. About 10 blacks had been dismissed during the past 10 months, he said, and none had been reinstated. According to Sergeant Adair, approximately 50 percent of all white officers are reinstated after having been dismissed by the police director.[31]

On the issue of police-community relations, Sergeant Adair said that the police department was in the process of purging itself of bad or ineffective police officers. He maintained that citizen complaints are greatly exaggerated. Although there may be some cases of police bad judgment, by and large, the actual number of police brutality cases is small in his opinion. He further stated that the internal affairs bureau does a "pretty good job," since they only investigate for administrative or departmental rules violations.[32]

Sergeant Adair further expounded on the development of the MPD since 1972. He stated that before 1972 the few black officers on the force were more qualified in all respects than their white counterparts. However, he told Commission staff that all white officers employed within the last 5 years have college degrees and that the standards, or entrance requirements, for black recruits have been lowered and the MPD is now getting "bad or ill prepared" black officers. Sergeant Adair said he believed this might be a contributing factor to abuse of black citizens by black police officers.[33]

It should be noted that as a result of the consent decree in *U.S. v Memphis*, the MPD was granted permission to set aside its relatively new policy requiring officers to have 2 years of college education if MPD goals for the employment of minorities and women could not be met and the educational requirement appeared to have an adverse influence on meeting those goals.[34] In the 1974 suit that led to the consent decree, and in other suits against the MPD, the Afro-American Police Association charged that the educational requirement effectively discriminated against minority persons, and the AAPA, therefore, wished for it to be struck down. In response to information subpenaed from the city by the U.S. Commission on Civil Rights, Joseph D. Sabitini, director of personnel, wrote that the city had essentially discontinued use of all selection requirements for all prospective officers, including the 2-year college requirement.[35]

Whether black officers recently hired by the MPD are "ill prepared", i.e., have limited education, as Sergeant Adair contends, and whether all or many of the white officers hired in the last 5 years do have college educations and by implication are therefore "well prepared" is a debatable point.

Notes To Chapter 3

1. City of Memphis, Memphis Police Department, "History of Memphis Police Department" (1964), not paginated.

2. Afro-American Police Association, "Historical Sketch of the Black Police Officer," not dated, not paginated (hereafter cited as "Historical Sketch of the Black Police Officer").

3. Ibid.

4. Ibid.

5. Ibid.

6. *Commercial Appeal*, Nov. 16, 1976, p. B–1.

7. "Historical Sketch of the Black Police Officer."

8. *Commercial Appeal*, Nov. 16, 1976, p. B–1.

9. Ibid.

10. City of Memphis, Memphis Police Department, Civilian Complement Report, Apr. 29, 1977.

11. Charles Conway, interview in Memphis, May 1, 1977 (hereafter cited as Conway Interview).

12. Ibid.

13. Charles Conway, telephone interview, Oct. 6, 1977.

14. Conway Interview.

15. Ibid.

16. U.S., Department of Justice, Community Relations Service, *Memphis Police Project* (1974) pp. 2–3.

17. City of Memphis, Memphis Police Department, *Memphis Police Academy* (1974), p. 1 (hereafter cited as *Memphis Police Academy*).

18. Ibid.

19. Ibid, p. 3.

20. William Turner, interview in Memphis, May 4, 1977 (hereafter cited as Turner Interview).

21. *Memphis Police Academy*, pp. 37–57.

22. Turner Interview.

23. Ibid.

24. Ibid.

25. Ibid.

26. Joseph Kent, interview in Memphis, Aug. 26, 1976.

27. Ibid.

28. Ibid.

29. Joseph Kent, testimony before the U.S. Commission on Civil Rights hearing, Memphis, Tenn., May 9, 1977, transcript, pp. 217–18.

30. Eddie Adair, interview in Memphis, May 2, 1977.

31. Ibid.

32. Ibid.

33. Ibid.

34. United States v. City of Memphis, No. 74–285 (U.S.D.C. W.D. Tenn., Consent Decree, Nov. 27, 1974), at 9.

35. Letter to USCCR, May 5, 1977.

Chapter 4

PAST EFFORTS TO IMPROVE POLICE-COMMUNITY RELATIONS

NAACP Hearings

Improving relations between black Memphians and the city police has been a priority for the Memphis branch of the National Association for the Advancement of Colored People (NAACP) since Maxine Smith became its executive secretary in 1962. The Memphis NAACP is the largest branch in the South and the second largest in the United States. Still, its efforts toward improving police-community relations have met with little success. The NAACP has tried to provide some solutions to the problems, but Maxine Smith said, "I don't think the powers that be really want a solution."[1]

Many of the solutions proposed by the NAACP were developed during a series of six hearings on the administration of justice. The 1970 hearings dealt with police brutality as well as bail bond reform, street crime, court reform, and other issues. Panels of black elected officials and community leaders, including city council members Fred Davis, Theo Patterson, and Rev. James Netters, Ben Hooks, and Jessee Turner, heard testimony from citizens and criminal justice experts. University professors, court judges, and county police officials were among the speakers. Memphis citizens who felt they had been abused by the police spoke also.

Memphis police and city officials were invited but did not cooperate with, nor participate in, the hearings. In response to citizen allegations of police brutality, Frank Holloman, director of police from 1968 until 1970, said he had never heard of a brutal policeman.[2]

The NAACP hearings received extensive coverage by the media. Officials at WMC–TV said hate mail and threats were received at the television station after the NAACP findings of poor police-community relations were supported by editorials of the station.[3]

An outgrowth of the hearings was an NAACP 18-point program to improve relations between police and the black community of Memphis. Titled "Toward More Effective Crime Prevention Which Will Provide Protection for the Citizens, for the Police," the program itemizes 18 suggestions which were submitted to city and police officials. According to Ms. Smith, officials expressed no willingness to discuss or to adopt any of the suggestions.

It should be noted that some of the suggestions in the 18-point program are similar to changes which have been made in the Memphis Police Department since 1970. For example, the NAACP suggested that the director of police need not be a police officer, but should be a person skilled in administration and personnel management and have the potential for understanding crime and the problems of law enforcement. E. Winslow Chapman, appointed police director in September 1976, had previously worked in an administrative capacity but had no prior experience as a police officer.

The full 18-point program follows. Suggestions 2, 6, and 7 have been implemented by the Memphis Police Department.

1. The director of police should not necessarily be a policeman but should be especially skilled in administration, personnel, and business management and should have the potential for developing an understanding of crime and its concomitant problems—law enforcement and justice.
2. The civil service regulations should be amended for the top positions in the department such that professional officers from this and other communities will be eligible to compete for said positions.
3. Maximize the use of civilian employees in areas of administration, records, radio, and traffic safety so that professional officers could be used in their special fields.
4. Develop a safety-traffic division using persons chiefly skilled in engineering safety and traffic control. These persons, including meter maids, should not be permitted to carry lethal weapons.

5. Organize a domestic intervention division with persons especially trained in counseling, referral techniques, and handling personal conflict situations. Personnel in this division should not carry lethal weapons.

6. Organize a city detoxication unit, whose personnel should not be armed.

7. Increase the starting salary level of rookie policemen.

8. Three of the seven top positions in the Memphis Police Department—director, chief, and five assistant chiefs—should be black.

9. 40 percent of the inspectors and heads of department should be black.

10. 40 percent of the civilians in the department should be black.

11. The department has asked for 200 additional officers. All of these should be black.

12. Special experimental units should be formed to work in the black community to combat the increase in crime. Black officers and those officers sensitive to the black community should be assigned to these units.

13. An office of ombudsman with adequate staff and funds should be established under the control of the City Council and given authority to investigate any complaint within city government.

14. A broadly based citizen advisory committee, including blacks, women, the young, so-called hippies, and militants, should be established to work with the police department in each councilmanic district.

15. A strict local and State gun registration law should be enacted; moreover, support by local public governing bodies should be given to national gun control legislation.

16. Intensive inservice training for civilian and professional personnel, including all top officials, should be utilized to combat racism in the department. Methods used in this training should include encounter-confrontation learning process.

17. A new guideline for use of lethal force by officers should simply state that: "A police officer shall use lethal force only when he is clearly defending his own life or when clearly defending the life of another individual or fellow officer."

18. Develop a program to eradicate the dual standard of justice in our area.

City Council Investigation

At the recommendation of its committee on police, the Memphis City Council in 1972 authorized a 90-day investigation of police misconduct. A resolution adopted September 5, 1972, appropriated $50,000 for the investigation headed by a three-man team: former city attorney James Manier, former criminal court judge Odell Horton, and former Federal Bureau of Investigation (FBI) agent Don Owens. The action of the city council was "prompted by widespread community concern over possible misconduct and improper activities on the part of some members of the Memphis Police Department."[4]

The investigation team met with various city officials, including the mayor, police officials, the city attorney and the local district attorney general. Complaints were received from officers within the police department, former officers, and citizens. Private detectives, current and former MPD officers, and FBI agents and law students assisted with the investigation. A total of 179 complaints were investigated.[5]

In January 1973, eight specific findings were presented to the city council in a report of the investigation team. It was noted that black officers in the Memphis Police Department held low ranks and felt that their supervisors were insensitive to minority persons. The team also found:

- An attitude of defensiveness on the part of higher officers of the Memphis Police Department, including a tendency to look to other sources and institutions as the main cause of police problems.
- Strong evidence of excessive use of force by some members of the police department both in making arrests and after the prisoner is in custody. There are instances of dehumanizing treatment of persons, both male and female.
- Serious factional divisions...in the police Department which affect the selection of top officers and are generally detrimental to the efficient functioning of the department.
- An apparent absence of intensive supervision of officers on duty, particularly on night shifts.[6]

Recommendations for actions the city council might take to restore public confidence in the

Memphis police were enumerated in the report. Perhaps the most sweeping recommendation was that a qualified organization, such as the International Association of Chiefs of Police (IACP), conduct a thorough 0technical and professional0 evaluation of the MPD. Such an evaluation was never made although members of the city council and community still talk of its merit.[7] Director of Police Services E. Winslow Chapman told the Tennessee Advisory Committee on October 8, 1976, that he was "negotiating with the IACP for a review of our discipline procedures," and would discuss with the association..."the possibility [of] a review of the department as a whole."[8]

In May 1977 Director Chapman said the IACP had advised him that there would be little value in such a study until the "restructure of the department was completed, the budgetary process in particular."[9] Mayor Chandler said he would have no objection to any evaluation of the MPD, "especially by the International Chiefs of Police."[10]

The investigation team made suggestions as to how the problems they identified might be solved. The team recommended the formation of a citizens crime commission, more rigid supervision of police by supervisory personnel, the establishment of a training program that would deal not only with professional police methods but also with the behavioral sciences, the reevaluation of the status of black police officers, and a general review of promotional policies and civil service regulations.

Several recommendations related specifically to complaints of police misconduct and procedures of the MPD Internal Affairs Bureau were made:

- Clear and definite steps should be taken to establish a policy and to indoctrinate all police officers against the use of excessive and unnecessary force and brutality.

- Evidence of a wide variety of unprofessional and criminal acts involving present officers of the Police Department appears in the files [developed by the investigation team]. Efforts should be made to establish the fitness or unfitness of these officers for service on the Memphis Police Department.

- The methods of seeking information from witnesses by the Internal Affairs Division should be improved so that a particular witness will not be called upon to make a statement or accusation in an atmosphere which does not invite disclosure....a change of location from office space in the Police Department is desirable. Further, consideration should be given to removal of the Internal Affairs Division from the chain of command to the Director of Police. Officers should be assigned thereto either permanently or in such a way that they would not be involved on duty with officers they had previously had under investigation.[11]

City Councilperson Robert James said one of the recommendations was implemented by the council—the offices of the MPD Internal Affairs Bureau were moved out of the police department buildings. Mr. James stated, at the Commission hearing, that after receiving the report of the investigating team, the council did recognize that the facts presented to them pointed toward brutality on the part of some police officers. "It was obvious," he said. Some cases of alleged wrongdoing were turned over to the grand jury. The city council, according to Mr. James, did make it known "that [thed council wanted the brutality to stop."[12] Yet no other action was taken by the council as a result of its $50,000 study.

Two veteran city councilpersons told Commission staff that the study was not thorough because Mayor Chandler did not release certain records that the investigation team had requested. Thomas Todd said that the mayor just didn't see fit to give access to the information.[13]

A.D. Alissandratos called the investigation "incomplete" as a result of the mayor's actions. Officers who were implicated in wrongdoing, he said, were left with the knowledge that they "could get away with it."[14] Yet, the city council did not use its power, given in the city charter, to subpena persons and documents in the conduct of council investigations.[15] A majority vote from the council could have commanded the records needed.

Police Director E. Winslow Chapman served as executive assistant to Mayor Wyeth Chandler in 1972 (and until the time of his appointment as director of police in September 1976). Nevertheless, when questioned about the Chandler administration's reaction to the investigation and what had or had not been done as a result of the investigation, Mr. Chapman said that neither as assistant to the mayor nor as a concerned citizen of Memphis could he provide any imformation.[16] W. O. Crumby, who served as deputy chief of police in 1972, chief of police from 1975 until 1977, and acting director of police in 1975 and 1976, called the investigation team's report "a piece of garbage."[17]

At present only two recommendations made by the team of experts in law enforcement have been implemented. First, as already mentioned, the offices of the Internal Affairs Bureau were relocated. Second, after Mr. Chapman was appointed director of police services he made that bureau directly responsible to him.[18]

New York City Police Department Study

In 1974 the New York Police Department (NYPD) invited the police departments of 12 major cities to participate in a management exchange program. The program, made possible by a grant from the Law Enforcement Assistance Administration of the U.S. Department of Justice, was designed "to create a flow of ideas...for crime fighting and management."[19] The Baltimore, Columbus, Dallas, Denver, Jacksonville, Kansas City, Minneapolis, Oakland, San Juan, Seattle, Washington, D.C., and Memphis police departments participated.

Officers from the NYPD spent 8 weeks in Memphis reviewing all phases of police operations. Three Memphis officers (Chief Inspector Jewel Ray, Captain George Feathers, and Lt. H.A. Embry) spent 8 weeks with the New York Police Department. The only expense to the city of Memphis was the salaries paid the Memphis officers while they were away from their regular assignments.[20]

The 214-page report prepared by the NYPD officers includes a brief overview of "comments" on the policies and procedures of the Memphis Police Department. Organizational structure, discipline, equipment, training, the traffic bureau, press relations, recruiting programs, and numerous other topics are discussed. The NYPD comments are actually suggestions for change which would, in the opinions of the NYPD officers, result in improvements in police services. In some instances the NYPD officers noted techniques used in Memphis which they intended to suggest be used in New York, for example, the use of one-color cars, which would cost less than two-color cars, and the use of blue lights on police cars instead of red.[21] Many parts of the report are relevant to police-community relations. Included are a review of the Internal Affairs Bureau, press relations, psychological testing, counseling, and ordnance policies.

In 1974 the NYPD officers commented that no procedural manual existed for the Internal Affairs Bureau (IAB). "Methods of receipt and forwarding of complaints appear to depend on the goodwill and integrity of the officer receiving the complaint," the NYPD report stated.[22] Though some of the suggestions made in the New York study have been implemented since 1974 (they cannot conclusively be attributed to the NYPD study) there still is no comprehensive procedural manual for the IAB. Tighter controls do exist over the "logging in" of complaints. As suggested by the NYPD, a control number is issued for each complaint received. It was suggested that IAB personnel report only to the director of police and that cases involving possible criminal misconduct not be "farmed out" to other police units such as burglary or intelligence.[23] Both of those changes were made in 1977 by Director of Police E. Winslow Chapman.

Other comments on the IAB included suggestions that the investigators file include his or her conclusions and recommendations, that all complainants' statements be tape recorded, and that the IAB be staffed 24-hours a day, 7 days a week.[24] No action has been taken by the MPD on those comments.

"The need and importance of good press relations does not appear to be fully appreciated by the Memphis Police Department," according to the NYPD study.[25] It was noted that no personnel were assigned the duty of providing the news media with timely and accurate information about police work. In practice, reporters obtain the facts from a variety of sources. The result can be incorrect information, annoying delays for the media and the public. The NYPD officers noted that the informal process of dispensing news was "observed to break down on numerous occasions which resulted in unfavorable press for the department."[26] They recommended that a press relations office be established and that its top personnel report to the director of police. To date, Memphis still uses informal channels to dispense news and to respond to questions of the media.

Psychological tests administered to prospective police officers since 1970 are used to detect mental disorders. State law imposes this requirement although officers hired prior to July 1, 1970, are exempted.[27] The NYPD officers commented that psychological tests can also be used to show "in what areas of the department an individual will function at his best."[28] Counseling services for officers who are experiencing personal problems which may be job-related were thought to be a good idea by the New York officers. A counselor with knowledge of police problems and experiences would be helpful. Although the MPD organizational chart in 1974 showed a counseling unit under the personnel section, no such services were available.[29]

After their review of the ordnance section, the NYPD officers noted that firearms retraining should be increased from once a year to twice a year and that the instructions as to what constitutes "justification for use of deadly force should be provided periodically throughout the year by patrol supervisors as well as by range officers."[30]

Despite the willingness of MPD officials to participate in the study and to meet weekly with the NYPD officers to discuss their observations, the study had little effect in the actual operations of the Memphis Police Department. Officials at the joint city-county police planning office said they knew of no written commentary or response to the study. It was regarded as "just another report."[31]

City Councilperson, and chair of its law enforcement committee, Robert James was not familiar with the content of the report. When asked to give his opinion of the study and to say which if any of the proposed changes were accepted in the MPD, he replied:

> I can't recall enough of that [NYPD study]. That was not ours [city council's]. It was the administration's. There were some favorable comparisons made and some unfavorable, but I am not familiar enough to comment on that.[32]

U.S. Department of Justice Study and Negotiations

In 1971 a young black man, Elton Hayes, was allegedly beaten to death by Memphis police officers. One officer was indicted for murder and four others for assault to murder in connection with Hayes death. All were acquitted following a trial in December 1973. Many Memphis citizens, both black and white, loudly protested the acquittal.[33]

The Community Relations Service (CRS) of the U.S. Department of Justice (DOJ) responded to the resulting unrest in the community by offering its services as conciliators to the city.[34] In cooperation with the Memphis Community Relations Commission and Jay Hybbard, Director of Police Services (1972–1975), a three-phase conciliation program was begun.

The first phase was the completion of a survey of police-community relations, firearms policies, recruitment of minority officers, training, and deployment. A written report was released in May 1974.

A workshop to further identify and isolate police-community problems, the second part of the program, was held May 23, 1974, and was attended by city officials and citizens. The citizens met several times in June and further refined the recommendations for improving police-community relations that had been developed at the workshop.

Those recommendations served as the basis for discussion in the third phase of the CRS program—"formal negotiations aimed at resolving the differences through constructive action."[35] These formal negotiations could have resolved differences between the community and police, but a final agreement between the city and the community negotiating team was never reached. The community team included representatives of the Urban League, League of Women Voters, NAACP, People United to Save Humanity, the Junior League, Chamber of Commerce, American Civil Liberties Union, and many others. Henry Evans, currently chief executive officer of Memphis, was the spokesman for the city. In 1974 he was director of personnel for the city.

The recommendations of the community negotiating team covered eight major categories: community relationships, community resources, police-community service centers, promotions, recruitment training, investigative and complaint procedures, and general police policies. The recommendations did not have the unanimous agreement of all community representatives before they were presented to the city during formal negotiations. They did, however, express the majority point of view.[36] The full text of the recommendations is reprinted below.

I. Community Relationships

1. Police-community relations recommendations previously made by community organizations should be reported to the Mayor, the City Council, the Police Director and any resulting actions made public.

2. Identify and remove those officers with a past history of poor community relations. Those identified may be of service in other job locales.

3. There should be an immediate beginning of the proposed Public Housing Security Program.

II. Community Recources

1. Crisis intervention units should be created to deal specifically with family disputes. Until such a unit is established, Family Services of Memphis should be utilized in the instruction program at the Memphis Police Academy.

2. Individuals or agencies working within neighborhoods should be utilized as resource persons to assist police in assessing community needs.

3. Similarly, individuals or agencies that serve the total Memphis community should be utilized as resource persons to assist the police in discovering and assessing community needs.

4. A counseling program dealing in areas such as financial, marital, child development, etc., should be utilized to provide extended services for police officers and their families. The counseling program would be available for use by police officers but not mandatory. These services will be extended on a confidential basis. Professional community social service agencies will be sought to provide these services.

III. Police Community Service Centers

1. Police Community Service Centers can have a very positive influence on the community if they are made an integral part of the overall police operations, in that they should be included in the regular police budget. The services and objectives of centers should be revised to reflect community concerns. In addition the services and objectives should be flexible enough to vary with community changes.

IV. Promotions

1. Black police officers should be reconsidered for promotion to higher positions immediately.

2. The time-in-grade system should be suspended for two years in order to correct certain injustices regarding promotion practices.

V. Recruitment

1. Juvenile records as well as adult arrest records with non-convictions should not be taken into consideration for employment.

2. The Memphis Police Department should furnish employment information throughout the community by way of the mass media, and through counselors at educational institutions and employment centers, and to organizations such as the NAACP, PUSH, and other minority groups.

3. A concentrated effort should be made to improve the public image of what a policeman is like as a person, and how such a career is worth looking into. Professionally prepared recruitment literature directed toward these ends is a necessity.

4. Eliminate all unproved job related educational requirements. This elimination is in addition to the military waiver granted veterans. Encourage the continuation of a cadet program with no age limitation.

5. Use of the polygraph test responses should be job related and validated as a pre-employment requirement.

6. Use of minority personnel as interviewers, testers, etc., should be increased.

7. Other community based professional agencies should be used to assist in recruitment of potential police officers.

8. Department recruiters should be specially trained to assure a more professional approach to recruitment. Also an adequate budget should be provided for this purpose.

9. The hiring and promotion of blacks will have a positive effect on recruitment.

10. The use of psychological testing should be reevaluated, with emphasis given to proper motivation and emotional stability.

VI. Training

1. There should be more training on the non-use of firearms, and on the proper use of firearms.

2. A continuing in-service program should be mandatory for all officers.

3. There should be an increase in the use of black personnel in the police training process.

4. Appropriate facilities should be considered for a comprehensive police training site.

5. The police training program also should include the following:

A. Cultural differences.
B. Effective communications techniques
C. Human relations skills
D. Implementation of total awareness clinics
E. An increase in human relations training.

VII. Investigative and Complaint Procedures

1. A Citizens-Police Advisory Council, working with the police department; should be established to review and recommend policies, procedures and regulations.

2. Powers and responsibilities of the Citizens-Police Advisory Council:

A. Shall seek to involve as many persons as possible in activities which will maintain the public safety and improve police-community relations.

B. Shall advise the Precinct Commander and other appropriate officials with regard to citizen attitudes toward specific officers or policies.

C. Shall recommend policy changes to the Precinct Commander and the Director of Police pertaining to issues of police-community relations.

D. Shall make recommendations concerning the police coverage of the Precinct.

E. Shall promptly refer complaints regarding police service or police officers to the proper complaint process currently in existence or to be established.

F. Shall accept and document complaints, not individual in nature, but about the policies, procedures and regulations from citizens and policemen.

H. Shall assist a comprehensive crime prevention program to be submitted to the Precinct Commander and the Director of Police.

I. Shall coordinate, suggest, and promote para-police volunteer activities, i.e., Police Reserve Corps, Junior Police Reserve Corps, Courtesy Patrols, etc.

J. Shall hold public hearings on policies, procedures, and regulations.

K. Shall have the power to subpena records and documents and to compel witnesses to appear at any hearings.

L. Shall submit an annual report to the Mayor, City Council, Director of Police, Department of Justice and the public on the Council's activities.

M. Shall adopt rules of procedures for carrying out the above.

3. Composition of Citizens-Police Advisory Council.

A. The advisory council shall be composed of 15 community organizations representatives and 6 police representatives.

The 15 community organizations must include as permanent members representatives from: American Civil Liberties Union, Chamber of Commerce, Community Relations Commission, Junior League, League of Women Voters, National Association for the Advancement of Colored People, National Conference of Christians and Jews, People United to Save Humanity, Tennessee Commission on Human Development, Urban League. The remaining 5 positions will be appointed by the Mayor subject to approval by the City Council and representing a cross-section of the community.

The 6 police representatives must include 3 blacks and 3 white policemen representing the following: Afro-American Police Association (1), Police Union (1), Metro Squad (2), Deputy Chief (1), Patrolman (1).

B. All members of the advisory council shall have the same powers and authorities.

C. The official name of the group shall be the Citizens-Police Advisory Council.

4. The Internal Affairs Bureau and complaint procedures should be re-examined and modified to include on-site investigations as well as follow-up investigations by the Internal Affairs Bureau.

VIII. Policies

1. There presently exists no official police department policy manual, as referred to in the Justice Department study, page 29, it is recommended that wihin 60 days of the presentation of these recommendations to the Memphis Police De-

partment, that a loose leaf policy manual consisting of current interdepartmental memoranda issued by the director should be compiled and distributed to all personnel and said personnel should sign a form indicating that he or she has received and read the manual.

2. Deadly force should be used *only* in the defense of the officer's life, or the defense of another person's life.

3. A task force should be established to research the constitutionality or necessity of the retention of arrest records of persons who have not been convicted.

4. A study on the need for a model state law covering entrapment and abuses thereof and the correct policies and procedures now in use by the Memphis Police Department is needed.[37]

The negotiating team continued to meet until November 1974. The *Commercial Appeal* reported that the group was nearing agreement. The group had reached accord on some issues and a formal agreement was to be prepared and signed by all parties. But as Herman Ewing, a negotiation team representative of the Urban League, told the Tennessee Advisory Committee, "That whole effort was aborted. It proved to have no real impact on the city."[38] Henry Evans, chief speaker for the city during those negotiations, confirmed the opinion that the negotiations were fruitless: "There were a combination of agreements that were reached....[T]he total package was never implemented however...."[39]

The major issues on which the city and the citizens disagreed were the formation of a citizen-police advisory council, the use of deadly force, and hiring goals for the police department.

Henry Evans remembered the issue of hiring goals as the most divisive. He said the community team was asking for a "50 percent hiring quota of black versus white in subsequent police classes."[40] The city was negotiating a consent decree with the Civil Rights Division of the U.S. Department of Justice during the time of the negotiations on police-community relations. The percentages for hiring agreed to in the consent decree were basically the same as the community negotiating team was demanding, according to Evans.[41] Basically, the agreement was that future recruit classes were to be comprised of 50 percent black recruits. Although this process was followed, there have been only two classes since the inception of the consent decree. Additional black representation has, therefore, been minimal.

Some citizens on the negotiating team felt that agreement on the other issues would be of little significance unless the city would increase the number of blacks on the police force and also in the upper ranks of the force.[42] The formal negotiations adjourned in November after 5 months of discussions.

Despite the fact that the negotiating effort did not accomplish its defined goal (constructive action to resolve differences between the community and the police), three important observations should be recorded.

First, representatives from a wide variety of citizens groups—not just civil rights groups—were concerned enough about the state of police-community relations in Memphis to remain faithful to the negotiating team effort over a period of several months. Many of those citizens have indicated that they would be willing to take part in similar negotiations once again.

Second, the negotiating team lost any benefits that might have accrued from their efforts when some representatives refused to sign an agreement that did not deal with all issues that concerned them. The meeting adjourned, the city had signed its consent decree with the Department of Justice related to the employment of blacks; and neither side—city nor citizens—took the initiative to call the group back together. Henry Evans summed up the breakdown this way: "Because we [city] weren't willing to go on one particular agreement, they [citizens] were willing to wash their hands and say we don't want any of it."[43]

Jocelyn Wurzburg, a negotiator for the Urban League, expressed regret that the few agreements reached in the negotiations were lost:

> ...I didn't realize that was a total adjourning of the whole thing....The city didn't see any need to call us back and we certainly didn't do it. There were some good things lost because of it and I feel badly because of it.[44]

Third, given the intense interest of several citizen groups in the issue of the employment of blacks on the police force, it was a grave injustice to the people of Memphis and the city government that the Civil Rights Division (CRD) and the Community Relations Service (CRS) of DOJ did not consult with one another about the consent decree being negotiated between the city and the Civil Rights Division.

Herman Ewing of the Urban League said knowledge of the negotiations came "at the eleventh hour...just before signing."[45] Jerry George, the CRD attorney who negotiated that decree, said there was no established procedure in the DOJ which would have enabled him to know in advance that the CRS was heavily involved in resolving conflicts between Memphis police and citizens.[46] Officials of the CRS said they did not know of the negotiations leading to the consent decree until shortly before the decree was signed.[47]

Employment Discrimination Litigation

Litigation that serves to eradicate discriminatory municipal employment practices, in addition to assuring equal employment rights, has a profound effect upon police-community relations as well:

> By now, the objectives sought to be achieved in litigation such as this are endorsed by all enlightened portions of the citizenry. That minorities are entitled to equal opportunity in securing public employment is hardly subject to doubt; and it has become a truism that all citizens profit when the city achieves an integrated [police] force of qualified individuals sensitive to diverse problems, and accepted by all portions of the population.[48]

The U.S. Attorney General, through the U.S. Department of Justice, Civil Rights Division, Employment Section, is authorized to sue State and local governments that engage in discriminatory employment practices prohibited under the Constitution and various Federal laws. In November 1974 Federal and city officials agreed to a consent decree setting forth court-ordered steps designed to ensure equal employment opportunity for blacks and women in Memphis municipal employment.[49] Included in the citywide decree[50] were certain provisions regarding black and female employment opportunities within the Memphis Police Department.

As stated previously, certain members of the 1974 police-community negotiating team severely criticized officials of the U.S. Department of Justice for their failure to apprise the community of the negotiations with city officials. Beyond the criticism directed towards the manner in which the consent decree was achieved, the extent to which it would correct the historical underrepresentation of blacks and women on the force was severely criticized.

The city agreed to undertake as its "...long term goal, subject to the availability of qualified applicants, the goal of achieving throughout the work force proportions of black and female employees in each job classification, approximating their respective proportions in the civilian labor force."[51]

With regard to hiring, the city was charged with an interim goal of filling, with certain exceptions including the MPD, at least 50 percent of all city employment vacancies with black applicants.[52] With regard to the MPD, however, instead of a numerical ratio for employment of blacks and women, the city was given an interim goal (by June 30, 1976) of increasing the level of black employment to 7 percent of the total sworn force and increasing the female employment, "by between four (4) and five (5) percent..." of the sworn force.[53]

Henry Evans, chief administrative officer for Memphis, who represented the city in the negotiations leading to the consent decree, attempted to explain to the Commission why the numerical ratio of 1:1 black-white hiring was not included as an interim goal of the MPD:

> We were not willing to go to a one to one hiring quota on every [recruitd class since the percentage that we had already agreed to with the Justice Department provided, one, basically that same thing for which they were demanding and, secondly, a much more meaningful goal because if we failed to meet it in one class, it increased the goal commitment in the following class.[54]

There have been only two recruit classes since the inception of the consent decree.[55] Apparently, both have included approximately 50 percent blacks.[56] In terms of actual numbers of black officers on the force, there has been an increase from 114 in May 1974[57] to 193 in April 1977[58] or a gain of black officers roughly equivalant to 7 percent of the sworn force. This translates, however, into the fact that only 15 percent of the sworn force is composed of black (male and female) officers, a gain of only 5 percent since the consent decree. This figure remains far short of the long term goal (to be "substantially complied" with 5 years after entry of the consent decree)59 of representation of blacks on the department in proportion to their presence in the civilian labor force, i.e., approximately 40 percent black representation.

With regard to the hiring of women, the MPD has increased its female representation from 33 in May 1974[60] to 53 in April 1977.[61] This is less than half of the required interim goal of 4 to 5 percent of the sworn force (i.e., approximately 50 additional females to be hired by June 30, 1976) and renders the long term goal of proportional representation of women on the force an empty promise.

With regard to promotions in the MPD the consent decree provides:

> While no specific numerical goal will be established for these positions during the period ending June 30, 1976, the City commits itself to making significant progress in increasing the number of black and female supervisory personnel.[62]

This procedure has been severely criticized primarily because the MPD was allowed to use seniority lists in effect prior to the decree for use in setting priority for promotions. Those lists contained virtually no blacks or women.[63] The subsequent history of the failure to promote blacks and women underscores the validity of the criticism directed against the promotion process used by the MPD. Promotion records subpenaed by the U.S. Commission on Civil Rights[64] show that since the inception of the consent decree on November 27, 1974, through April 29, 1977, there have been 35 promotions within the MPD—30 white males, five black males, and no women. Furthermore, the highest promotion given to a black (from captain to inspector) was given in an "acting" capacity.[65]

The Afro-American Police Association subsequently filed suit against the city claiming continued racially discriminatory hiring and promotion practices by the MPD.[66]

Under terms of the consent decree[67] the city was allowed to use pass-fail written promotional and hiring[68] examinations for the MPD. However, in order to rely upon them, the city was to prove their validity and nondiscriminatory impact.[69] According to Mr. Sabitini, city personnel director, neither the hiring nor the promotional tests have been validated and therefore their use has been discontinued.[70]

The city was required by the consent decree to appoint an EEO officer to advise blacks and female employees of the terms of the consent decree and to receive and investigate complaints of race and sex discrimination.[71] A white male was appointed to the position.[72]

In summary, the consent decree (with regard to the MPD) is inadequate on its face in terms of meaningful and timely hiring and promotion of blacks and women. Furthermore, after 29 months (November 27, 1974, to April 29, 1977) of implementation of the consent decree, the MPD has realized a minimal gain in black employment, even less gain in female employment, virtually no gain in black promotions, and literally no gain in female promotions.

Far from being a panacea for effectuating representative hiring and promotion of blacks and women and thereby improving overall police-community relations as well, the consent decree has become a focal point of frustration for many, including those persons whose rights it ostensibly protects.

Notes to Chapter 4

1.Maxine Smith, statement before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights, open meeting, Memphis, Tenn., Oct. 8–9, 1976, transcript, p. 371 (hereafter cited as Open Meeting Transcript).

2.Maxine Smith, telephone interview, Aug. 1, 1977.

3.M.E. Griener, vice president and general manager, WMC-TV, telephone interview, Sept. 21, 1976.

4.City of Memphis, City Council, "Report of Council Investigating Committee," Jan. 9, 1973, not paginated (hereafter cited as Council Report).

5.*Commercial Appeal*, July 19, 1976, p. 6.

6.Council Report.

7.Patrick Halloran, city councilperson, testimony before the U.S. Commission on Civil Rights, hearing, Memphis, Tenn., May 9, 1977, transcript, p. 287 (hereafter cited as Hearing Transcript), and Thomas Todd, Jr., city councilperson, interview in Memphis, May 3, 1977 (hereafter cited as Todd Interview), and Patrick Halloran, interview in Memphis, May 4, 1977.

8.Open Meeting Transcript, p. 26.

9.Hearing Transcript, pp. 304–05.

10.Hearing Transcript, p. 335.

11.Council Report.

12.Hearing Transcript, pp. 279–80.

13.Todd Interview; A.D. Alissandratos, interview in Memphis, Apr. 27, 1977 (hereafter cited as Alissandratos Interview).

14.Alissandratos Interview.

15.Memphis, Tenn., Charter, Art. 7, § 47.

16.Open Meeting Transcript, pp. 55–58.

17.*Commercial Appeal*, July 19, 1976.

18.Open Meeting Transcript, p. 19.

19.*Commercial Appeal*, May 14, 1974.

20.Sgt. George J. Rymer, office of management analysis, New York Police Department, telephone interview, Aug. 1, 1977.

21.New York City Police Department Middle Management Exchange Program, *A Study of the Memphis, Tennessee Police Department*, July 1974, p. 182 (hereafter cited as NYPD Study).

22.NYPD Study, p. 120.

23.Ibid., pp. 122, 125.

24.Ibid., pp. 123–24.

25.Ibid., p. 185.

26.Ibid.

27.Tenn. Stat. Ann. Ch. 38, §104(8).

28.NYPD Study, p. 138.

29.Ibid., p. 174.

30.Ibid., p. 158.

31.Lee Forbes, lieutenant, Memphis-Shelby County Criminal Justice Coordinating Council, telephone interview, Aug. 1, 1977.

32.Hearing Transcript, p. 273.

33.U.S., Department of Justice, "Memphis Police and the Minority Community: A Critique" (1974), p. 2 (hereafter cited as DOJ Critique).

34.Ozell Sutton, Regional Director, Community Relations Service, U.S. Department of Justice, interview in Atlanta, Ga., Aug. 18, 1977.

35.DOJ Critique, p. ii.

36.Representatives of the Community Negotiation Team, "Suggested Recommendations to Improve Police Community Relations," July 10, 1974, p. 1 (hereafter cited as Negotiation Team Recommendations).

37.Ibid., pp. 2–6.

38.Open Meeting Transcript, p. 108.

39.Hearing Transcript, p. 234.

40.Ibid., p. 263.

41.Ibid.

42.Open Meeting Transcript, pp. 158–59.

43.Hearing Transcript, p. 262.

44.Open Meeting Transcript, p. 159.

45.Ibid., p. 92.

46.Interview in Memphis, Apr. 21, 1977.

47.Bobby D. Doctor, Regional Director, Southern Regional Office, U.S. Commission on Civil Rights, memo to I. T. Creswell, Jr., Assistant Staff Director, U.S. Commission on Civil Rights, Sept. 24, 1976.

48.Officers for Justice v. N.D. Civil Service Commission, No. C-73-0657 RFP (U.S.D.C. N.D., Cal., Jan. 7, 1977); CCH Emp. Prac. Dec., 14 EPD § 7548.

49.United States v. Memphis, No. 74-285 (U.S.D.C. W.D. Tenn., consent decree issued Nov. 27, 1974) (hereafter cited as U.S. v. Memphis).

50.The Memphis Light, Gas & Water Division was excepted from the terms of the Consent Decree, U.S. v. Memphis, at 1.

51.U.S. v. Memphis, at 4.

52.*Id.*

53.*Id.*, at 8.

54.Evans Testimony, Hearing Transcript, p. 263.

55.Sabitini Testimony Hearing Transcript, pp. 237–38.

56.Ibid.

57.DOJ critique, p. 4.

58.Memphis, Tenn., "Complement Report, Memphis Police Department for Week Ending 4/29/77," computer run no. R65C028A, p. 1511, (hereafter cited as Complement Report, Memphis Police).

59.U.S. v. Memphis, at 19.

60.DOJ Critique, p.4.

61.Complement Report, Memphis Police.

62.U.S. v. Memphis at 10.

63.Wurzburg Statement, Open Meeting Transcript, pp. 135–36, 156.

64.Materials subpenaed from Joseph Sabitini, Director of Personnel, City of Memphis; "Commissioned Officers Promoted: 1974 to Present," May 5, 1977.

65.Ibid.

66.Afro-American Police Association v. Memphis, No. C-75-380 (U.S.D.C. W.D., Tenn., filed Aug. 20, 1975).

67.U.S. v. Memphis, at 9.

68.*Id.*, at 12–13.

69.*Id.*, at 9, 12–13. 70.Joseph Sabitini to U.S. Commission on Civil Rights, May 5, 1977 ("Re: Materials commanded by subpena issued Joseph D. Sabitini") pp. 2, 3.

71.U.S. v. Memphis, at 18.

72.Floyd Rickman, equal employment opportunity officer, interview in Memphis, May 5, 1977.

Chapter 5

COMMUNITY PERSPECTIVE

At both the Tennessee Advisory Committee open meeting and the Commission hearing, a broad cross section of the Memphis community was solicited for comment on the nature of police-community relations in Memphis. This process proved invaluable in terms of identifying problems and the extent of agreement as to the causes of those problems. In addition, much testimony was heard as to what the various community groups and leaders, representing diverse interests and constituencies, perceive can and should be done to address the problems raised.

Memphis Branch of the NAACP

Maxine Smith, a native Memphian, school board member, and executive secretary of the NAACP in Memphis since 1962, spoke forcefully of her belief that police-community relations in Memphis, particularly from the viewpoint of the black community, have historically been and continue to be "very poor."[1]

Citing the long and difficult struggles that black Memphians have undergone to obtain their civil rights, Ms. Smith stated that such change has come about only when elected officials and community leaders have been forced to react because of "extreme pressure."[2]

> We have attempted to appeal to the good sense, to the fair play...to the morality which we have found to be absent in most instances, and, unfortunately, the response has only been to crisis.[3]

Despite gains in other civil rights areas, Ms. Smith conceded a sense of frustration at the inability of the black community to affectuate change in the manner in which she perceives that blacks are discriminated against "in the adminstration of justice" in Memphis. In identifying specific problem areas that particularly affect blacks, i.e., police misconduct, failure of internal and external controls of police misconduct,[4] and employment discrimination within the Memphis Police Department, Ms. Smith cited the resistence of elected officials (particularly Mayor Chandler)[5] and community leaders [6] to solving those problems as the major obstacle encountered by the black community:

> It bewilders me that the burden of change falls on the shoulders of the black people and isolated white friends...we are the segment of the community who is least able to bear the burden financially, politically, or any other way.[7]

Referring to police misconduct as "this curse that afflicts us,"[8] Ms. Smith stated that since she has been with the NAACP in Memphis, "there have been hundreds, perhaps thousands, of cases filed by the NAACP charging police brutality."[9] She explained that the NAACP does not file every complaint received,[10] but rather attempts to determine those that have "merit and validity."[11] Ms. Smith stated that in many cases the condition of the complainants has demonstrated "physical evidence of physical abuse" and that in some instances there are great differences in size of the officers and the individual arrested and battered with the advantage being given to the arresting officer.[12]

> Our job is not to try the person who comes into our office...but be the individuals guilty or innocent, there is something wrong, we feel very strongly, with an arresting officer who has to half kill an individual in order to arrest that individual.[13]

Ms. Smith emphasized that not all complaints received by the NAACP involved physical abuse:

> The sanctity of the home is just completely ignored. Police just enter homes as if they owned them...without benefit of a warrant or anything else.
>
> It would seem that...the law would dictate...that abuse, verbal abuse, can be just as debilitating to the alleged victim as physical abuse.[14]
>
> Too often we get people who are held for 72 hours on suspicion and, you know, we are suspicious because we are black.[15]

Ms. Smith stated that charges such as "disorderly conduct" and "resisting arrest" are often used as a "license" for a police officer to physically and verbally abuse a citizen.[16] Noting that blacks have a history of arrest out of proportion to their presence in the Memphis population, Ms. Smith stated:

> I am not surprised at the number of arrests because our complaints reflect so often [that those] persons who are are arrested [are those persons who are] beaten, abused verbally.[17]

Ms. Smith added that the charges are often dismissed at the subsequent judicial hearing.[18]

With regard to the recently appointed Police Director, E. Winslow Chapman, Ms. Smith stated a sense of "gratification" that Director Chapman "has expressed a willingness" to resolve citizen complaints against department personnel. Noting the increased level of communication between her office and the police director, initiated by Director Chapman, Ms. Smith stated:

> ...the number of complaints and the condition of complainants have not lessened in number of severity.... [Director Chapmen's attitude] hasn't trickled down to the policeman on the street who has the day-to-day contact with the citizen.[19]

In order to have as many responsible officials notified of complaints received by the NAACP as possible, Ms. Smith stated that the complaints are referred to several different areas:[20]

> We direct [the complaints] not only to the head official of the police department...but to the mayor, members of the city council, to the media, to the FBI, to the Attorney General, to the civil service, the...Human Relations Commission; and we are practically ignored.
>
> I see no real commitment on any part of the community, exclusive of the black community and some human relations groups, to really rid our city of the problem of police abuse....[21]

Ms. Smith said there is a "lack of sensitivity to the needs and the desires of black people that is continuously exhibited by the police department."[22] Expressing her belief that the department is unable to investigate itself even-handedly,[23] Ms. Smith said that in the "vast majority"[24] of complaints investigated by the police department, "no cause is found"[25] for disciplinary action. In response to written requests for reports of the department's findings in each complaint referred, Ms. Smith stated, "the longest report is a one sentence report—-denying guilt on the part of the officer or officers involved."[26] She characterized the response of other city, State, and Federal agencies to which the NAACP has referred complaints as follows:

> We have never had any response that indicated that any real effort was being made to correct the condition or any admittance that any wrong had been committed.[27]

Ms. Smith cited the disparity in the number of blacks in the department as a factor contributing significantly to the state of poor police-community relations in Memphis. Recalling efforts of the NAACP and other organizations over the past several years to improve black representation in the department,[28] she said, in terms of employment opportunities for blacks, "[I]t has been our experience and our observation that the department has done no more than it has been forced to do."[29]

Noting that the Memphis Police Department had no affirmative action plan for minority employment until the consent decree between the U.S. Department of Justice and the city of Memphis,[30] Ms. Smith stated that the department still had no blacks in policy making positions in the department:

> There was a consent decree entered...community groups did negotiate and met for a long time [on the issue of minority employment]. However, to my knowledge, those who were most affected had nothing to do with the consent and the only thing that has come out of that has been an increase in the number of black patrolmen. I think that's fairly token in the whole scope of things.[31]

Ms. Smith cited the creation of the Afro American Police Association[32] as "indicative that something is amiss within the Department."[33]

> [T]hat group has come to our office because conditions were so miserable and so racially biased [against the black officers] who serve within the police department.[34]

Ms. Smith said, "If the police department will not treat its own members fairly, certainly it will not treat the citizenry it serves fairly."[35] Ms. Smith, citing a research study conducted by the sociology departments of Memphis State University and Lemoyne-Owens College[36] at the time the NAACP undertook its study of the administration of justice,[37] said there is a "vast difference in the level of trust" between the black community and the white community with regard to the Memphis Police Department.[38] "[B]lack people," she said, "generally don't trust police officers" and are "reluctant" to notify the department when law enforcement assistance is needed.[39] Indicating that white Memphians,[40] particularly the more affluent,[41] are more disinterested than trusting of the department, Ms. Smith offered by way of explanation that the problems "don't reach them."[42]

> That is the kind of mentality that I think pervades most communities and I think they are as little concerned about the police as they are their impression of black people and poor people, because there are many victims, white victims, who are on the lower end of the economic pole, who too are victimized....[43]

Calling for increased communication between the black and white communities, Ms. Smith expressed the need for all components of the community to deal with problems inhibiting overall good police-community relations in Memphis. Emphasizing that it is neither equitable nor possible for the black community to solve all the problems, Ms. Smith stated that the total community must make the commitment to resolve those problems, problems that ultimately affect every Memphis citizen.

Memphis Urban League

Herman Ewing, executive director of the Memphis Urban League since 1969, was invited to appear before the Tennessee Advisory Committee to share his impressions of police-community relations based upon his perspective and experience with the organization. Mr. Ewing described the Memphis Urban League:

> ...a community service organization that has dedicated itself to improving the quality of life of blacks and low-income people in the Memphis community [with the] understanding that when the quality of life is improved for the low man on the totem pole, it is improved for the entire community.[44]

The Memphis Urban League, affiliated with the National Urban League, Inc., is largely autonomous in the conduct of local affairs, subject to policies and standards established for all affiliates by the national organization. It receives financial support from a variety of sources, including contracts with local, State, and Federal Goverment; contributions from the Memphis United Way; and private contributions.[45] Approximately 60 percent of the Memphis Urban League's funding is dependent upon public and private contributions from the Memphis community.[46]

Stating that, "the general welfare and atmosphere of government towards the citizenry is an item of major concern for the Urban League,"[47] Mr. Ewing cited the defensive attitude of the "leadership"[48] in the community (which he said,"permeates" the entire community as well as the Memphis Police Department[49] as the single factor contributing the most to what he termed, "a bad situation up and down, just a bad situation."[50] Mr. Ewing told the Tennessee Advisory Committee:

> Now, it seems as though what government is saying is, "We would rather have blacks out on the street corner and on the roof tops and marching in the streets rather than go in and sit down in a calm and deliberate manner [and] attempt to get to the heart of the problems that face our community," and [this]...represents a crisis in leadership.[51]

Although he perceives the major problem to be the lack of positive civic leadership, Mr. Ewing said he did not wish to "minimize"[52] the police department's role:

> [T]here continues to be, not isolated, but very frequent cases where policemen exhibit, if not excessive force, just poor attitudes in general toward the general public.[53]

Mr. Ewing stressed that incidents of police misconduct are not perpetrated by the "large majority" of Memphis police officers, but, he said, "there is a substantial minority that continues to do things in their own way and encouraging new recruits to pick up the old habits."[54]

Mr. Ewing stated his belief that another significant factor contributing to the ongoing lack of confidence of the black community in the department is the "mentality" of "career officers who were certainly very vigorous in enforcing the separate but equal doctrines of not many years ago [and] still are influenced by their training of those years...."[55]

42

Citing past conversations with Memphis police officers, Mr. Ewing stated that there is pressure put upon police recruits by certain veteran officers to "become a part of an invisible system of doing things that is not a part of any formal, structured record in the police department."[56] Mr. Ewing stated that new officers are encouraged to "say nothing"[57] when minor violations of departmental regulations by other officers are observed. He added that this practice puts a recruit in "a difficult position when it comes to survival."[58] Illustrating this dilemma from a police officers' viewpoint, Mr. Ewing stated:

> If I am going to be a partner to this person...do I stand up for what is right and run the risk of being unprotected, should I get in a potentially hostile situation, or do I go along with these minor infractions only to be forced to go along with a major infraction of the regulations simply because I have built a pattern of going along with the minor infractions.[59]

Mr. Ewing emphasized that the image of the Memphis Police Department in the black community has hindered the efforts of the Urban League in recruiting blacks to the department.[60]

> [O]ne of the problems is that to be a recruiter for the police department, such as the Urban League or any other institution, you almost have to become an advocate of the police department and it becomes very difficult to say to a young person who perhaps could pursue a career in law enforcement with the Memphis Police Department that we recommend this to you.[61]

An aggravating factor to the incidents of police misconduct, Mr. Ewing stated, is the "obvious lack of strict disciplinary action against police officers who commit offenses against minorities."[62] Citing the nonresponsiveness of the department's internal affairs bureau (IAB), in both the investigation and public reporting of police misconduct,[63] Mr. Ewing said there is no adequate forum, either internal or external, for coping with police misconduct. In the opinion of Mr. Ewing, neither the IAB, the civil service commission,[64] nor the courts have been able to effectively mete out the disciplinary action required.[65] Nothing the "obvious" ineffectiveness of the department's efforts to police itself, Mr. Ewing stated:

> Internal coverups or internal failure to investigate fully [instances of police misconduct] to the complete satisfaction of the entire community makes any police department attempt to project an image of good will hard to swallow.[66]

Mr. Ewing indicated that resort to a criminal court of law has proved ineffective because of both the evidentiary burden required for conviction and a basic "insensitivity of the courts to citizens' complaints of abuse."[67] With regard to the civil service commission, he cited the "few instances" in which the commission has upheld departmental disciplinary action as indicative of the commission's ineffectiveness in dealing with the problem.[68]

Based upon his perspective from day-to-day contacts with black and economically disadvantaged Memphians, Mr. Ewing outlined several problem areas that need to be addressed to improve the poor state of police-community relations in Memphis. He offered several recommendations, notably an increase in police training in handling "minority community relations."[69]

Beyond specific recommendations, Mr. Ewing emphasized that the primary ingredient necessary for solving the pervasive police-community relations problems in Memphis is an informed and positive commitment of the leadership of Memphis to deal with the problems. He stated that the problem will only be resolved:

> ...when the leadership of this city...can step forward and say, "Yes, these are our problems." Not just a general admission that we have got problems—that is an out—but, "these are our problems. We invite leadership of all communities, of all groups to assemble with us to project some solutions which we will implement to resolve these problems." Until we do that, we are not going to get anywhere.[70]

American Civil Liberties Union of Tennessee (ACLU/T)

During the course of both the Tennessee Advisory Committee's open meeting and the Commission's hearing, testimony was heard from ACLU/T officers and cooperating attorneys regarding police-community relations in Memphis.

Chan Kendrick, executive director of the Tennessee affiliatate of the National American Civil

Liberties Union, Inc., provided testimony on the ACLU/T involvement in police-community relations. Philip Arnold and Bruce Kramer, who are members of the ACLU/T, spoke of their experience in litigating cases that involved police misconduct.[71]

The ACLU/T office located in Memphis is one of 46 affiliate chapters nationwide and currently has approximately 550 members who support its function of ACLU: to protect and defend the civil liberties of individuals and groups whose legal rights are guaranteed by the Bill of Rights of the Constitution. The ACLU/T provides guidance and legal counseling, and often legal representation as well, to individuals and groups seeking to secure their civil rights. The majority of ACLU/T efforts have been in Memphis and the immediate areas.[72]

The three ACLU/T representatives, reflecting the opinions of other private and public service organization representatives, said they consider the matter of police misconduct against Memphis residents to be, "perhaps the top priority issue"[73] of their organization. The ACLU/T routinely receives complaints of police misconduct in the course of its operations. Mr. Kendrick said:

> ...during the past year [from April 1976 to April 1977] we received about 175 complaints of police misconduct. A lot of those were beatings, harrassment, breaking into someone's home or car...field interrogation, that sort of thing. Most of our complaints range in that area.[74]

Mr. Kendrick testified that the ACLU/T screens out those cases believed to be without merit and routinely refers the remainder to the Memphis Police Department's Internal Affairs Bureau[75] As observed by other persons who have received complaints of police misconduct, Mr. Arnold said that some complainants arrive at the ACLU/T office bearing evidence (e.g., "scars, or stitches or whatever") of physical abuse.[76]

Mr. Kendrick reflected the testimony of others in commenting upon the nonresponsiveness and futility of referring complaints to the IAB. He stated that approximately 100 of the 175 complaints received during the last year had been referred to the IAB, with the complainants receiving, if anything, only a form letter in response to their complaints.[77]

In addition, Mr. Kendrick stated that he writes directly to the IAB in an attempt to ascertain the dispostion of the complaints that the ACLU/T has referred:

> My letters to the Internal Affaris [Bureau] have not been answered. I will write a followup letter after I send a complaint to the department and I will never hear from them one way or the other.[78]

Mr. Kendrick also responded to Director Chapman's announcement that he wanted complaints of police misconduct to be brought directly to his attention. Having done so on several occasions, Mr. Kendrick said that as of July 15, 1977, his office had not received any correspondence from the director in response to the complaints referred to him.[79]

Mr. Kramer, testifying about the reluctance of many persons to file a complaint of police misconduct with the IAB, said that retaliation by police officers against certain persons who have filed complaints was a factor causing the reluctance. He cited a specific incident where officers had followed one of his clients repeatedly after she had filed a complaint with the IAB, which had "a chilling effect upon her filing a suit."[80]

Of the complaints received by the ACLU/T approximately two-thirds involved complainants who had criminal charges brought against them, such as resisting arrest, disorderly conduct, assault and battery on a police officer, and interfering with a police officer.[81]

> It has often happened in a situation...where the police would stop someone and question that person. It ends up often with the person being physically assaulted and then, of course, charged with resisting arrest and assault and battery on an officer.[82]

In an effort to determine the validity of these kinds of charges, the ACLU/T has monitored the disposition of those charges through the judicial process.[83] The monitoring activity was from April 1976 through April 1977 and included approximately 100 complaints of police misconduct filed with the ACLU/T where the complainant was charged with one or more of these kinds of criminal charges.

Mr. Kendrick stated that between 25–30 percent were ultimately dismissed, the vast majority before

44

the charges were brought to trial.[84] Typically in such instances, Mr. Kendrick stated, the arresting officer will not appear to testify in support of the charges, which are therefore dismissed.[85]

Mr. Arnold citing both his involvement with ACLU/T and his experience in private practice, stated his opinion that police officers will frequently use their arrest powers in an effort to justify physical abuse against citizens.[86] He described one case:[87]

> A person was arrested for disregarding a red light and a couple of other traffic offenses and then assault and battery on the police officer and resisting arrest.
>
> This person was subdued by the police officer with an old shock absorber. He was hit over the head with an old shock absorber and beaten into unconsciousness and then, of course, he was charged with resisting arrest and battery....
>
> The city court judge did sustain one of the traffic charges—disregarding a red light—and, of course, the other charges were dismissed.[88]

All three ACLU/T representatives stated their belief that the substantial majority of police misconduct affects blacks in particular, but is also visited upon other persons "of low-economic standing."[89] Mr. Arnold discussed a practice that has particular impact upon the black community, the statistics for which were developed pursuant to an ACLU-supported lawsuit[90] against the Memphis Police Department—the use of deadly force:

> Now whether or not we deal with the propriety of the issue of deadly force—we looked at its application and we found that 58 percent of the persons arrested in the city of Memphis are black; but of those persons against whom deadly force was employed, that is who the police shot at, 87 percent were black.
>
> We got a statistician to testify and his analysis was that there was only one chance in ten thousand mathematical probablity, that race was not the factor in these disparate statistics.[91]

Mr. Kendrick, in addressing possible solutions to ongoing police-community relations problems in Memphis, said that change in police practices and community attitudes through voluntary community action will not be significant without provisions for mandatory change as well. Citing limited resources and other problems in litigating change, he endorsed the recommendation of A.C. Wharton of the Memphis and Shelby County Legal Services Association of Federal funding for litigation to combat police misconduct.[92] With regard to the Memphis Police Department's ability to effectively combat police misconduct by its officers, Mr. Kendrick stated:

> We have talked for a long time in this community about police investigating police. It is not going to work. It hasn't worked, and it will not work in the future. What we need is an independent agency to investigate police complaints.[93]

Memphis and Shelby County Legal Services Association

A.C. Wharton appeared before both the Tennessee Advisory Committee and the Commission to address those police-community relations concerns upon which he has developed an informed opinion as executive director of the Memphis and Shelby County Legal Service Association since 1973.

The function of the legal services association, established in 1971, is to provide legal representation to indigent clients in a variety of civil matters. It does not handle criminal matters and can litigate only those civil matters that are not likely to generate a possible legal fee—a limitation designed to avoid invading the province of private attorneys.

The association is funded largely through the Legal Services Corporation, a private, nonprofit organization created and funded by Congress to provide legal assistance to the poor in civil matters.[94] It also receives a small portion of its funds from local sources.

Mr. Wharton said that his organization receives numerous complaints of police misconduct. In commenting upon the extent of such complaints, Mr. Wharton stated:

> The frequency is extremely high, and I have worked in various cities throughout the country. I have not worked with the police departments, but I have filed lawsuits against a number of police departments, and I would say that Memphis has one of the highest rates of reports of police misconduct of any city in the United Stated.[95]

Mr. Wharton indicated at the Tennessee Advisory Committee open meeting his impression that the black and poor residents of the Memphis community, i.e, those most directly affected by police misconduct and poor police-community relations in general, have been continually frustrated by the failures of past attempts to improve the situation:

> ...I have been into the community; I know the impatience that the citizens are holding there. I know that they are hungry for some clear and decisive action on this problem.[96]

Mr. Wharton said the association had routinely referred persons who complained of police misconduct to the internal affairs bureau of the Memphis Police Department and to State and Federal law enforcement officials.[97] In addition, Mr. Wharton said, because of the likelihood of a fee generating from a civil action, some complainants have been referred to private attorneys.[98]

Because of limited staff resources and jurisdictional restraints, he said, the everyday function of the legal services association has been in such areas as landlord-tenant, family, and consumer matters. In the past, therefore, staff had not concentrated on combating the problem of police misconduct.[99] Recently, however, recognizing the severity of the problem and the unwillingness or inability of either the IAB, State and Federal law enforcement officials, the private bar, or city officials to address the problem, Mr. Wharton said the legal services association has initiated efforts within its jursidiction to combat police misconduct:

> I will say that as we move into these areas that these lawsuits [based upon citizens complaints] will be prosecuted with the same vigor that we have prosecuted lawsuits against...other public authorities.
>
> And while we hold no false impressions as to what the Federal courts here are going to do for us, I do think that if the police department comes to know that each time they crack a skull or do something illegally, they are going to have to answer for it in court whether they prevail or not; I think that might serve as a deterrent.[100]

Asked to comment on the nature of the responses from the IAB, Mr. Wharton stated:

> Well, the only response we got is once we sent [a person] over and the police officer [s] filed suit against [her], that's the most direct response we have received.[101]

The suit,[102] filed in early October 1976 (immediately prior to the Tennessee Advisory Committee's open meeting), was a libel and slander action against the person who complained of police misconduct to the IAB, filed by the police officers named in the complaint. Mr. Wharton, during the open meeting, expressed his exasperation, both as a concerned citizen and as a person who had referred complainants to the IAB:

> ...how in the world can anyone in light of this particular lawsuit now advise an individual to go to the Internal Affairs Bureau and file a complaint when that individual knows that he or she, whether they prevail on that complaint or not, [is] subject to being sued, [is] subject to being put to the cost of defending a lawsuit?[103]

Subsequently, the association defended the complainant with Mr. Wharton personally handling the case. Mr. Wharton based his defense on a citizen's right to complain about legitimate allegations of police misconduct without fear of retaliation.[104] The suit against his client was dismissed on January 25, 1977.[105]

Mr. Wharton said he had previously informed individuals that their complaints of police misconduct would be held in confidence by the IAB, based upon his understanding of the IAB process.[106] The IAB, however, as required by the Memphis Police Association's bargaining agreement with the city of Memphis, must provide the accused police officer with a copy of the complainant's signed affidavit against the officer prior to any questioning by IAB.[107] Presumably, this was the manner in which the officers gained the information needed to initiate the unsuccessful lawsuit.

Mr. Wharton expressed his opinion that the lawsuit filed by the police officers against the complainant was an intentional device to put the entire community on notice that citizens who had complaints about police misconduct could expect a lawsuit if they filed those complaints with the Memphis Police Department.[108]

Citing his experience and knowledge of internal investigation divisions in other cities in general and the IAB in particular, Mr. Wharton said he thought the idea of police departments policing police is inherently unworkable.[109] He said he

46

thought that proposals to make the IAB responsible either to a local arm of the judiciary or to the law enforcement committee of the city council[110] might be workable devices to make the process effective, but because there had not been any serious effort by responsible officials to initiate such action that "from an extremely practical standpoint, I don't think anything local is going to work."[111]

Mr. Wharton said that complaints of police misconduct, specifically physical abuse by police officers at the Memphis city jail, has resulted in the legal services association, with cooperating ACLU Attorney Phillip Arnold, filing suit against city officials:[112]

> [O]ur contentions are basically that there...exists exists a pattern of police misconduct, police brutality, within the city jail. We are asking the Federal court to order a number of corrections to remedy that situation.[113]

Citing several practical and legal considerations[114] that currently restrict the extent and degree of litigation to combat police misconduct, as well as the failure of local officials to combat the problem, Mr. Wharton recommended that the U.S. Commission on Civil Rights: (1) recommend to Congress that a program be instituted to provide grants and contracts to independent private organizations for the specific purpose of filing lawsuits against law enforcement officials accused of police misconduct,[115] and (2) recommend that the U.S. Department of Justice institute criminal proceedings against police officers whose actions indicate violation of federally guaranteed constitutional rights.[116]

Public Defender Offices

Both Memphis and Shelby County governments maintain public defender offices that have the responsibility, if not the adequate means, to provide constitutionally guaranteed legal representation to those charged with a criminal offense who cannot afford the services of a private attorney.

Separately authorized, financed, and maintained, the Shelby County office (established in 1917) basically handles felony cases,[117] while the relatively new (established in 1974) city office is restricted to defense of misdemeanor charges in municipal court.[118]

Shelby County Public Defender Edward G. Thompson has been with the office since 1964 and director of the program since 1974. The county public defender's staff consists of 13 full-time attorneys, 13 part-time attorneys, supported by 8 investigators and several graduate student social workers.

Nancy Sorak has been head of the city's public defender program since 1975. She is a city employee and the program is funded entirely from the city budget. The office staff consists of four attorneys who maintain a "tremendous caseload"[119] without benefit of investigative assistants.

Both Mr. Thompson and Ms. Sorak were subpenaed to appear before the Commission on May 9. Their impressions and opinions were particularly relevant to the Commission's inquiry into police-community relations in Memphis, because being public defenders and local government employees, their testimony afforded a unique perspective and insight into police-community relations. With regard to the extent of physical abuse, both stated that demonstrative and factual evidence of unwarranted physical abuse by police officers has been continually observed by them and their respective staffs.[120]

Mr. Thompson stated that the attorneys and investigators in his office frequently receive "significant" complaints of physical abuse during the course of their representation of indigent clients. "Almost daily we get a complaint about being shoved, or the handcuffs too tight," he said. He distinguished these types of complaints from those he termed "significant" (turning a police dog on a suspect after the suspect has been in custody, or placing a telephone book on a suspect's head, with the book being hit by an officer using a police baton, for the purpose of obtaining a confession. Significant complaints, he said, are received several times a week.[121]

Ms. Sorak speaking for herself and her staff, stated:

> We have observed what we feel, all of us feel, are instances of abuse by the police department that were not necessarily brought to our attention by our clients. In very bad situations, of course, looking at him...you can see that he has been subjected to some abuse and some questioning will determine that it did not happen at the time he was arrested or for [the reason] he was arrested.[122]

As discussed earlier in this chapter, several representatives of various public and private service organizations, as well as individual complainants themselves,[123] alleged that a pattern exists of Memphis police officers charging a citizen with offenses such as "resisting arrest," "disorderly conduct," or "interfering with a police officer" to justify, often after the fact, physical abuse by the charging officer.

Ms. Sorak, as the person responsible for defending indigent clients who have been charged with such offenses, is in the position to comment on this serious allegation. Ms. Sorak stated:

> I think that our main observation of abuse is people that come in on essentially what I would call "trumped up charges"...very frequently disorderly conduct, resisting arrest, interfering with a police officer, will be crafted up together and generally when you see those three charges, you are going to see a defendant that has received some treatment from a police officer....[124]

In some instances, Ms. Sorak stated, due to the lack of a speedy trial, inability to secure bail, and the conditions of the city jail some of her clients have chosen to plead guilty to one of the "trumped up charges."[125]

Mr. Thompson said he believes that there is a relationship between citizen's allegations of physical abuse and the charges placed against them by the officers who allegedly perpetrated the abuse. He said his opinion is not as informed as Ms. Sorak's, because his office does not generally defend clients on misdemeanor charges.[126]

Concurring with the opinions of other witnesses, both public defenders cited the lack of response from the IAB, despite specific requests for information about the disposition of complaints.[127] Mr. Thompson offered his belief that, despite Director Chapman's stated intentions, the Memphis Police Association's contract with the city severely restricts his options in investigating complaints against police officers:

> Many of our people are told that if they want their complaint pursued that they must take the polygraph, the lie detector test, administered by the internal affairs, and then the policeman will refuse to do it and the investigation stops.[128]

Ms. Sorak said she had spoken with Director Chapman about police misconduct and her concern that complaints be investigated and resolved. Director Chapman indicated his agreement with her and requested that he be notified directly of such complaints. After sending three affidavits of complaints to the director and receiving no respsonses, her office staff inquired as to the disposition of the first complaint sent:

> [W]e received no notice of what happened to it or anything, and, finally, through contacting the police director, we found that they were not going to pursue it, and we advised the woman that she should take civil action if she felt it was necessary. There was nothing else we could do.[129]

With regard to persons they have referred to the IAB, both public defenders said they have occasionally been informed by complainants of incidents of retaliation by the individual police officers cited in their complaints.[130] Both public defenders said that many of their clients refuse to file a complaint with the IAB and were reluctant to go "back to the police department under any circumstances."[131] Mr. Thompson stated his opinion that the clients do not believe they will get any positive response from the department.[132] Ms. Sorak expanded on Mr. Thompson's remarks, stating that in addition to the belief of many clients that the department will not act on their complaints, many of her clients are confused as to what their legal rights are and the proper avenues for vindication of those rights.[133]

Mr. Thompson and Ms. Sorak, while recognizing that they represent only indigents, expressed their belief (supported by their experience in private practice and general observation of the community) that the majority of police misconduct in Memphis is visited upon poor and black residents.[134] Both were also in agreement that, because the poor and black residents bear most of the direct burden of police misconduct, the "middle class" (i.e., largely white and affluent) of Memphis, through ignorance or indifference, is not a factor in pressing for an end to police misconduct.

Speaking of the likelihood of the entire community effectively working towards ending police misconduct, Mr. Thompson stated:

> I think you would have to get the middle class interested and at the present time they are not

> because they either don't see [police misconduct] or don't choose to believe it when they read about it.[135]

Ms. Sorak expressed her agreement with Mr. Thompson's opinion and added:

> I suspect that if any of [the middle class] population...were subjected to the kind of treatment that we see on a daily basis that they would be exceedingly indignant and be pursuing [action] in all directions. But the fact of the matter is that it doesn't happen to those persons.[136]

Both public defenders were asked their opinions on what is needed to alleviate the police-community relations problems they had discussed. Mr. Thompson said that eventual solutions to the problems must include commitments by the political leadership and the community to..."do something about the problem and not pretend it doesn't exist." He indicated that this will require a change in community attitudes towards the problem, because "the attitude that you see in some officers of the police department reflects community attitudes to some extent." Mr. Thompson indicated, however, that this commitment will not come about voluntarily:

> I think the spearhead is going to have to come from Federal courts the same as it did in the school [desegregation] cases here and the park cases and other the others.[137]

Ms. Sorak expressed her agreement with Mr. Thompson's statement and also called for dissemination of information to the community, particularly the poor and black members, with regard to constitutional rights and the appropriate means to redress their grievances:

> [T]here needs to be information out on the streets of what is a justifiable complaint. Everyone knows that if an officer beats your head or sics dogs on you that obviously you are not being treated fairly, but I think the majority of the community don't realize that there are a lot of other things that can constitute arbitrary police abuse action...I think that the legal community...could make the populace aware of what would constitute grounds for a complaint, when you see it, or when you are the subject of it, and where you might take your complaint, and what kind of action you might expect.[138]

The consensus of both public defenders as to the existence, nature, and extent of police misconduct in particular and police-community relations problems in general, is significant. In the course of their professional responsibilities, both public defenders have indisputedly been in the positon to speak with knowledge and experience. Both are local government employees, and neither (Ms. Sorak in particular) are in a position to be naturally critical of the Memphis Police Department and the officials responsible for its operation. The significance of their testimonies, moreover, is underscored by the fact that they substantiated in many significant areas the earlier testimonies of representatives of the NAACP, Urban League, ACLU, and the Memphis and Shelby County Legal Services Association.

Individual Complaints of Police Misconduct

Numerous Memphis residents interviewed by members of the Tennessee Advisory Committee and staff of the U.S. Commission on Civil Rights told of mistreatment by Memphis police officers. Their allegations included harassment, verbal abuse, brutality, and physical intimidation. Staff members also attended meetings of community groups where individual citizens gave vent to their frustrations and spoke of their inability to cope with or even understand why they or their communities had been singled out by certain Memphis police officers for continual surveillance. A surveillance, they stated, that reduced their freedom of movement and made them virtual prisoners in their own neighborhoods. A situation they found particularly intolerable since, they insisted, such action by the MPD was restricted to specific minority neighborhoods or communities.

Collaterally, approximately 30 Memphis residents appeared at the Tennessee Advisory Committee's open meeting, October 8–9, 1976, and told of alleged police mistreatment. The testimony given at the open meeting is illustrative of the many complaints of police mistreatment received by the Advisory Committee and Commission staff during the course of this study.

Individual Complainants

A black woman, mother of nine children, told the Advisory Committee that her entire family had been verbally abused and physically beaten by Memphis police officers. She said that police officers had accosted two of her sons in front of their home, searched them, and in the process began to beat one of them on the hands with a flashlight. Other family members who attempted to question the police were threatened with arrest. She said that a second and third police car arrived and police officers began to grab and beat everyone in sight including a paraplegic son who, in addition to being beaten, was knocked out of his wheelchair by police. She said that they were cited with disorderly conduct and assault and battery. At the trial of the family members, the judge dropped all charges except disorderly conduct.[139]

A middle-aged black man, a resident of north Memphis, described an incident in which he was stopped by police as he walked home from a local sundry. Three officers in a squad car stopped him and asked where he was going. When he replied that he was going home, he was told by the police officers that he was going to jail. As he was put into the squad car, he said, a young black man was pulled out of the car by the officer. The officer beat the young man for 2 or 3 minutes and threw him back in the car. A short time later the young man was pulled from the car a second time, and the three black officers beat him for about 5 minutes before throwing him back into the car. Later, when the officers turned their flashlights on the young man in the car, the complainant saw that the young man's head was "busted in front and behind."[140]

A grandmother related a harrowing experience with the Memphis police. In attempting to retrieve her grandchildren from the vicinity of a fight among neighborhood children, she was accosted by police officers and placed under arrest. When her son attempted to intervene, he also was arrested. She said that while being carried downtown the police officers, both of whom were white, said to her son, "We f—black women but we wouldn't f— your mama you little son-of-a-bitch....We ain't going to quit until we arrest all of you black-assed niggers, some of ya'll we are going to kill." She said her son's life was threatened several times during the ride to the police station.[141]

A young black woman spoke of two white officers who came to her home to serve a warrant on her brother. When they were informed that he was not there and did not live there, she said they used abusive language and forced their way into her home. She said that as she attempted to go out the door to the porch, where she could be seen by neighbors, she was forcefully thrown to the floor, and the officers stepped on her back, put two pairs of handcuffs on her, dragged her to the police car, where she was literally thrown into the squad car. Despite her protests they left her 2-year-old child in the house alone as they drove away to the police station.[142]

Another complainant, a black minister, told of his son's arrest while standing on a corner waiting for his mother to pick him up after school. The son, a junior high school student, was shouting and waving his arms to get his mother's attention as she passed in her car. Two police officers, passing by, stopped their car and searched the youth who became frightened and started to run. The policemen yelled for him to halt and he did. The policeman approached the youth and one said, "You know if you hadn't stopped, we were going to shoot you?" The officer slapped the boy and arrested him for disturbing the peace.[143]

The charges of police misconduct made during the Advisory Committees' open meeting were representative of charges made by Memphians during private interviews with Commission staff and those filed with the NAACP, ACLU, and PUSH.

Virtually all of the complainants interviewed and those who appeared at the open meeting said that they had filed formal complaints with the internal affairs bureau of the Memphis Police Department and several had willingly taken or offered to take a polygraph test to substantiate their charges. The complainants said that no action, to their knowledge, was ever taken by the bureau.

Subsequent to the October 1976 open meeting, Mayor Chandler said that the IAB would investigate the complaints of citizens who appeared before the Advisory Committee.[144] According to Mayor Chandler, however, several of the complainants were uncooperative when contacted by IAB officials.[145] Given the initial lack of IAB response to citizen complaints, together with the experiences they had endured at the hands of the police, lack of cooperation was not an unexpected response.

Community Leaders

Business Leaders

Although the Tennessee Advisory Committee to the U.S. Commission on Civil Rights did not conduct extensive interviews with individual business leaders of Memphis in its study of police-community relations, some measure of the business community's knowledge of police relations with the black community was attained through the Memphis Area Chamber of Commerce. Chambers of commerce are known not only for their interest in the economic development of the cities they represent, but also for their interest "in the total welfare...and quality of life" of their communities.[146]

Samuel Hollis, president of the Memphis Area Chamber of Commerce, said "we recognize that there are some problems" between the Memphis police and the community they serve.[147] Though the chamber regularly maintained contact with the mayor and the new police director, and had offered assistance to both in their efforts to improve police-community relations, it did not have any standing committee or similar vehicle for contributing to those efforts. Mr. Hollis stated that his contacts with the NAACP, members of the chamber board, and staff who are black had made him aware of allegations of police misuse of power.[148] The hearing conducted in Memphis by the U.S. Commission on Civil Rights, however, was the first time Mr. Hollis was aware of the large number of complaints which had been lodged against the police.[149]

On behalf of the chamber of commerce, Mr. Hollis offered "support...in any way possible" toward solving any problems and promoting any solution to the ill will between police and community. It was difficult for Mr. Hollis to specify what assistance the chamber might offer. The expertise of some of the chamber's business leaders might be useful to the police, or the chamber might fulfill the role of providing information to its membership about relations between the police and the black community, if asked to do so. He acknowledged, however, that

> ...in general...the feedback we get from our members would be more concern of crime and law and order as opposed to police brutality...and I think it is a matter of [lack of] information....[W]e would be happy to cooperate with them [city officials] in any effort....[150]

Police Director E. Winslow Chapman appeared to be trying to upgrade the professionalism of the Memphis police, Mr. Hollis said. Special training and discipline are needed to help some police officers overcome their prejudice toward blacks—a prejudice with which they were reared, according to Mr. Hollis, a native of Memphis.[151]

Edward Boldt, also a Memphis native and the executive director of the chamber of commerce, was less inclined to agree with Mr. Hollis that a real problem in police-community relations exists in Memphis. Recent media reports of alleged brutality did not indicate that any severe problems existed in Memphis in Mr. Boldt's opinion.[152] Just 5 days before Mr. Boldt was interviewed by a staff member of the Commission, Police Director Chapman had fired two police officers for beating a black inmate at the city jail, suspended one for beating a white male conventioneer, and also suspended a fourth officer involved in a beating.[153] Like Mr. Hollis, Mr. Boldt had also met with Director Chapman and offered the support of the chamber. Mr. Boldt thinks the business community, in general, is pleased with the selection and the performance of Director Chapman.

In 1976 the chamber of commerce was instrumental in creating the Greater Memphis Council on Crime and Delinquency. As an affiliate of the National Council on Crime and Delinquency, the purpose of the incorporated group is "investigation, research, education, and action concerning the causes of, and ways to prevent or reduce crime and delinquency in the Greater Memphis area."[154] The 40-member council is chaired by Newton Allen, and each council member serves on one of eight committees: justice, law enforcement, prisons and rehabilitation, media, churches, family life, schools, and youth. At present, only two of the committees (prisons and rehabilitation and family life) are active. Mr. Allen said the head of the law enforcement committee had met with Director Chapman to assure him of the committee's support, but the committee was not yet actively dealing with police issues. Mr. Allen said he believes that problems between police and minorities do exist because of the numerous allegations of misconduct that are reported. It is not unusual, he said, that in a large police department, there would be a "few bad actors."[155]

The Memphis Area Chamber of Commerce has a human relations division which, among other services, promotes purchasing from minority vendors, the hiring of ex-offenders, and provides counseling for minority business people. The number of positions on the chamber board was increased so that places would be available for minorities and women.[156] The Memphis chamber, therefore, has proved itself to be interested in the welfare of all Memphians and has taken positive steps to ensure their involvement in the chamber.

Changes that will prohibit chamber involvement in social issues are imminent, however. The broad interests of the Memphis Area Chamber, i.e., interests in the social development of Memphis as well as its economic development, have not been totally acceptable to many local business people. In September 1977 the chamber announced a massive reorganization and the resignation of Executive Director Boldt. The chamber of commerce was in severe financial trouble and steadily losing members. James McGehee, president-elect of the chamber, said that the "broad scope has resulted in some divisiveness."[157] The reorganization and cut in staff (from 29 persons to 10) will result in focusing the chamber's work strictly on recruiting industries that will provide new jobs. Chamber membership has declined steadily since 1974 when it peaked at 2,432. This year the chamber had approximately 1,800 members.[158] In contrast, the Nashville-Davidson Chamber of Commerce had 3,500 members in 1977.

In 1968, after the disturbances that followed the murder of Dr. Martin Luther King, Jr., the business leadership of Memphis pledged $4 million over the next 3 years "to get the city going again."[159] One businessman referred to those pledges as "blood money." Samuel Hollis, referring to those years, said, "The chamber did a lot to keep this town from blowing up in the 1960s and 1970s...a lot to get this community through those rough times and sometimes it wasn't popular."[160]

Business leaders have now made it abundantly clear, however, that they will no longer support a chamber that maintains involvement in "social programs." Significant questions will be answered after the chamber's full attention is turned to economic development. The questions are: Can a chamber of commerce be effective in economic development when major social issues (police-community relations among them) still divide the minority community from a substantial portion of the white community? Can a city prosper and attract new industry, new jobs, when its social, racial unrest is well known?

Religious Leaders

Members of the Memphis clergy and religious lay leaders have made some attempts to improve relations between the Memphis police and citizens. Their efforts, however well intentioned, have been fragmented and fruitless. Religious representatives have acknowledged that a severe police-community relations problem does exist.

The 1972 city council investigation of police brutality (discussed in chapter 4) prompted action by a coalition of church women and later by the Metropolitan Inter-Faith Association. The women's coalition, which referred to itself as "Women of Memphis," included Church Women United, the National Council of Jewish Women, the Diocese Council of Catholic Women, and other nonreligious groups called for the implementation of recommendations made in the report of the city council investigation. The group offered its support to Director of Police Jay Hubbard and called for Robert James, chair of the city council law enforcement committee, "to take immediate action."[161] As shown in chapter 4, however, no changes were made in the MPD as a result of the city council study.

The Metropolitan Inter-Faith Association was asked by the Committee on Health, Welfare, and Churches of the Memphis and Shelby County Human Relations Commission to appoint a task force to research and report on improving police-community relations. The interfaith association is an active, religious organization that provides some social services. An undated letter to the task force members from the two conveners indicated that the first meeting was attended by only two task force members.[162] The task force did not become active.

The most substantive effort made by religious leaders to improve police-community relations came in 1974. A number of churches and civic or-

The professional code of broadcasters acknowledges the personal responsibility of a broadcaster to the community:

> A broadcaster and his staff occupy a position of responsibility in the community and should conscientiously endeavor to be acquainted with its needs and characteristics in order to serve the welfare of its citizens.[176]

The media of Memphis have, at times, provided indepth coverage of police-citizen discussions and confrontations. Whether the media has provided enough such coverage and whether its obligations as teacher and interpreter have been met is a question the Memphis community must answer.

Investigative journalism is an effective means for truly serving the community in that information is gathered through other than regular or official sources. In Memphis, investigative reporting on police-community relations matters has been the exception rather than the rule. Paul Barnett of WREG-TV said his station did not do investigative reporting with the exception of some "human interest" stories such as a family being evicted.[177] M.E. Griener cited "limited staff" as the reason WMC-TV does little investigative work, although some had been done on allegations of police brutality.[178]

The citizens of Memphis should recall the investigative journalism of the *Commercial Appeal*, which in 1971, following a tip from inside the police department itself, pursued information on the traffic accident that allegedly killed Elton Hayes.[179] As a result, one Memphis police officer was indicted for murder and four other officers were indicted for assault to murder in connection with the incident. All were acquitted following a trial in December 1973. Several media persons in Memphis told staff of the U.S. Commission on Civil Rights that every rational person in Memphis believed that at least one of those police officers beat Elton Hayes to death.

In contrast, Memphis citizens should note a story in the *Commercial Appeal* on August 10, 1977, that reported the preliminary hearing of three defendants involved in a shooting on July 31—two blacks and one white Memphis police officer. The off-duty officer was accused of killing the son of the two black defendants who are charged with assault to murder and assault and battery. The 20-inch story devotes 8 inches to the police officer's account of the killing, 11-1/2 inches to background information (the court process, who are parties involved, what type bullets were recovered where, etc.) and 1/2 inch to the black defendants' account of the killing.[180]

When interviewed by Commission staff, the reporter who wrote the story said he simply "reported on the court hearing" and not much was said about the black defendants' side of the story.[181] Certainly that may be the case. However, why would a reporter not seek information from the other parties involved? If such information was not available from the black defendants or police, why not state that in the news story? Would an editor question such a one-sided account of a black-white tragedy given the ongoing allegations of police-citizen conflict? The editors did not question the story. The reporter, who is not normally assigned to the police beat, said he was not pressed by a deadline, but simply had to "draw the line somewhere" when it came to gathering news.[182]

A story on August 6, 1977, in the weekly *Tri-State Defender*, the only black-owned-and-operated newspaper in Memphis, reported the same July 31 shooting. The article reported only the black defendants' side of the story; no mention of the police account was made.[183] Memphis citizens should again ask, why did the reporter and editor not seek information from the other parties involved?

Mayor Wyeth Chandler said at the Commission's May 1977 public hearing that he believed the media have sometimes aroused negative attitudes toward the police department. He specifically mentioned "a black newspaper...[whose] headlines searingly state as facts, allegations."[184] A review of articles in the *Tri-State Defender* from late 1975 to late 1977 show that, with few exceptions, news articles on police-citizen conflict did include both police and citizen statements. A typical 1976 headline read "Woman 'Knocked Out,' Beaten by Policemen."[185] In 1977 the headlines more often qualified such allegations, as did this one: "Man Says Police 'Fractured His Skull'."[186]

Mayor Chandler testified that Police Director Chapman had told him that the problem of "searing headlines" had diminished since Chapman took office.[187] Linda Dickson, new managing editor of the *Tri-State Defender*, said communication between the police department and the newspaper had improved since Mr. Chapman had assumed his duties.[188]

Neil Sheehan, the man who is credited with obtaining the Pentagon Papers for the *New York Times*, said that the writers of the first amendment intended to give more to the journalist than just the right to report and publish. He said, "they imposed upon us a duty, a responsibility to assert the right of the American people to know the truth and to hold those who govern them to account."[189] The people of Memphis must ask themselves if the broadcasters and journalists of Memphis are asserting their right to hold city and police officials accountable for the poor police-community relations which exist in Memphis.

Professional Bar Associations

Professional associations of lawyers have a long history of service to the community. Those in Memphis are no exception. The largest of those organizations, the Memphis and Shelby County Bar Association (MSCBA) has approximately 1,200 members, most of whom are also members of the American Bar Association (ABA). The ABA is a national organization having the largest membership of any association of lawyers in the country. The MSCBA, independent of the ABA, maintains 29 standing committees and conducts a variety of educational forums in schools and churches during an annual "Law Day" celebration. The MSCBA president, Emmett Marston, estimated he devotes about one-third of his time to the work of the association.[190]

Of the approximately 47 black lawyers in Memphis, 35 are members of the local chapter of the National Bar Association (NBA). Many belong to the ABA also. The NBA maintains ad hoc committees; provides opportunities for its members to deal with police-community relations problems by donating their expertise.

Neither professional association, however, has conducted any formal study of police-citizens problems nor does either have a permanent committee which would deal directly with police-community relations. NBA President Larry Brown stated that he and the NBA "very definitely" believed there was a problem in police-community relations in Memphis,[191] and his MSCBA counterpart, Mr. Marston, said he did not know if there was a problem.[192]

The American Bar Association has traditionally developed, and revised as necessary, a model Code of Professional Responsibility which has served as a guide for the various States in the adoption of binding professional codes of conduct for lawyers in their jurisdictions. With regard to professional responsibility to identify problems in their communities, canon 2 of the Code of Professional Responsibility reads, in part:

> The legal profession should assist lay persons to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems that frequently arise.[193]

Canon 8 specifically encourages lawyers to aid in making needed changes and improvements which will advance the legal system.

Professional organizations elsewhere have conducted studies and published reports dealing with various phases of the American law enforcement system, i.e., courts, police, prisons. A recent publication of the North Carolina Academy of Trial Lawyers deals with the civil rights of both police and citizens.[194] It serves not only the purpose of educating both lay people and law enforcement personnel about their own rights, but makes them aware of each other's rights and duties and thus creates a base of common knowledge and promotes mutual respect.

The possibilities for a professional lawyers association to make a significant contribution to improving police-community relations in Memphis are countless. Unfortunately, no definite plans for doing so have been made to date.

Three attorneys who testified at the U.S. Civil Rights Commission hearing stated that they did not feel the legal community of Memphis had adequately fulfilled its responsibility in the area of the administration of justice, especially regarding allegations against the police department. Some thought local lawyers in private practice were concerned that they would bring professional harm to themselves if they got involved; others thought the small number of lawyers interested in criminal law made it difficult for the associations to pursue the issue.[195]

ganizations held 2 days of public hearings on police brutality in March 1974. Rev. Ed Currie of the Tennessee Black Assembly and Mary McWilliams of the Second Congregational Church chaired the hearings. A report on the hearings cited the death in 1971 of Elton Hayes, a black man, and the subsequent acquittal of Memphis police officers indicted in connection with his death, as a major impetus for the hearings.[163]

During the 2 days of hearings, police and citizens, district attorney's office personnel, and private attorneys talked about the problems between blacks and police and possible solutions to those problems. The report on the hearings clearly stated that the citizens who sponsored the hearings had given up the notion that public officials would solve the problem:

> Because of the lack of proper follow-up on police brutality and misconduct cases and the feeling that the Memphis City Council and other officials will not act responsibly on recommendations for an independent police review procedure, it is necessary for local community groups to structure their own redress procedures. A coalition effort to significantly alter the present criminal justice structure and process is mandatory and must be done immediately before someone else is murdered by police in Memphis.[164]

The procedures for redress that were recommended included the formation of a civilian review board, a citywide citizens committee to conduct an indepth study of the Memphis police department, and a review of police criteria for using deadly force.[165]

There is no indication of direct followup to the March 1974 hearings. However, the U.S. Department of Justice's Community Relations Service program of conciliation between city officials and citizens (discussed in chapter 4) was begun in late March 1974. The recommendations made by the church-civic leaders are similar to those made later during that program.

The leader of an organization of clergy, well known in the 1960s for its stands on social issues, told staff of the U.S. Commission on Civil Rights in 1977 that his group had no policy or statement regarding recent allegations of police brutality. Rev. Edward Reeves, president of the Memphis Ministers Association, said the association was just beginning to rebuild after a long dormant period. The association is an ecumenical biracial association with approximately 110 members.[166] In January 1977, when the association declined to take a stand on the death penalty, Rev. Reeves said:

> The association seems to favor the general practice of refraining from offering endorsements, recommendations, pronouncements....The primary goal set by the steering committee for this year was to establish a bond of fellowship among the clergy of Memphis.[167]

Rev. Reeves said that personally, through talks with black ministers, he was aware of severe problems between black citizens and city police. It was his impression, however, that most clergy were hopeful that Police Director Chapman would make positive changes. It appeared to many church leaders that Mayor Chandler was attempting, through Director Chapman, to improve human relations in Memphis.[168]

In August 1977, after a year when allegations of police brutality were often discussed at their meetings, the National Conference of Christians and Jews set up a committee on police-community relations. The committee, composed of 9 of the 53 board members, meets weekly. Staff said the committee was having informal talks with police and city officials about alleged police misconduct. Subsequent action by the committee will be planned after the initial rounds of talks. MPD Director Chapman, City Council Law Enforcement Committee Chair Robert James, and Memphis Police Association President Joe Kent had met with the committee. Mr. Kent had been invited and agreed to attend the NCCJ national conference on police-community relations in late August. The NCCJ, said staffer Lynn Bampfield, is concerned about police-community relations in Memphis and has become "deeply involved" in trying to improve those relations.[169]

Media

One of the highest compliments paid to the American media is that which refers to it as the "fourth branch of government." In addition to the executive, judiciary, and legislative branches, the media, in the minds of most Americans, is vested with the public's trust and is implicitly asked to serve as watchdog over the government of the people. This public trust brings with it a special relationship between the government and the media. Journalists and broadcasters are sensitive, and rightly so, to criticism or comments from government officials that give the appearance of attempting to influence the media. At the same time, honest governmental bodies are cautious to respect the right of the media to have access to certain information and to report that information.

For these reasons, the Tennessee Advisory Committee will not draw any conclusions nor make any recommendations about the performance of the Memphis media and its relationship to police-citizen conflict in Memphis. However, the Advisory Committee and staff do submit the following observations for the consideration of the citizens of Memphis—those who vest their trust in the newspapers, radio and television stations of Memphis.

During preparations for the Tennessee Advisory Committee's open meeting to discuss police-community relations in October 1976, representatives of Memphis radio and television stations and newspapers were personally interviewed by staff of the U.S. Civil Rights Commission. All were cooperative in giving their professional opinions about the status of relations between the community and police. Five of the seven persons—reporters, news directors, editors—explicitly stated that critical problems existed between police and black citizens and have for years. Yet when the Advisory Committee's open meeting was held and representatives of the media were asked to participate in the meeting to discuss these same matters, all, with the exception of staff of the black newspaper, *The Tri-State Defender*, declined to participate.

Representatives of the Scripps-Howard papers (*Commercial Appeal* and the *Press Scimitar*) said company policy forbade them from appearing. They said only the chief editor could grant permission for them to appear.[170] Efforts to contact *Commercial Appeal* editor Michael Grehl were unsuccessful. Phone calls from staff of the U.S. Commission on Civil Rights were not returned.

Broadcasters were even less responsive to invitations to participate. One radio station promised a participant who never materialized.[171] Of the two television stations invited to speak at the 1976 open meeting, one made no reply, the other declined, citing an ongoing Federal Communications Commission investigation into the station's programming and employment as the reason.[172]

Citizens of Memphis should be advised that in numerous other studies conducted by Advisory Committees to the U.S. Commission on Civil Rights, representatives of the media have been asked to give their opinions publicly on critical community problems and have done so. A 1975–76 study of police community relations in Miami and Dade County is a notable example. An editorial writer of the *Miami News*, publisher of the *Diario Las Americas*, and an investigative reporter of WPLG–TV were among the journalists who spoke at the June 1975 open meeting of the Florida Advisory Committee to the U.S. Commission on Civil Rights. Never before have media representatives declined to participate in open meetings held by the State Advisory Committees of the U.S. Commission on Civil Rights in the southern region.

Professional codes of ethics for both newspaper journalists and broadcasters clearly define their obligations to inform and educate the public, especially on issues of vital concern or controversy in the community. The code of ethics of the American Society of Newspaper Editors states that the primary function of a newspaper is to communicate to its readers what the members of the community do, feel, and think. It further states that "*its opportunities as a chronicle are indissolubly linked [to] its obligations as teacher and interpreter*". [173] (emphasis added).

The National Association of Broadcasters' code of good practice for television and radio singles out controversial public issues and the obligation of broadcasters to provide a public forum for discussion of those issues:

> The broadcaster should develop programs relating to controversial public issues of importance to his fellow citizens, and give fair representation to opposing sides of issues which materially affect the life or welfare of a substantial segment of the public.[174]

Broadcasters are regulated by the Federal Communications Commission and are required to serve the public interest as defined by the community served.[175] Citizens can challenge the license of a radio or television station that they feel does not fairly reflect their interest and serve the needs of the community.

Emmett Marston and Larry Brown agreed that their organizations would be willing to review the report of the U.S. Commission on Civil Rights based on its extensive study of police-community relations, draw their own conclusions, and determine how they, as vital community organizations, might become involved in dealing with police-community relations. Mr. Marston of the ABA qualified his response by saying that "if finding that a real problem exists" his group would consider being involved in finding solutions.[196] Mr. Brown said "we already know that these things [problems in police-community relations] exist...."[197]

Elected and Appointed Officials

City Council Members

Of the 13 members of the Memphis City Council, 11 were interviewed by staff of the U.S. Commission on Civil Rights regarding their opinions of police-community relations.[198] Seven of those council members (John Ford, J.D. Patterson, Fred Davis, Billy Hymen, Pat Halloran, A.D. Alissandratos, and Jeff Sanford) said they believed that police-community relations in Memphis were not good. Council Chairperson Oscar Edmonds, Jr., Law Enforcement Committee Chairperson Robert James, Ed McBrayer, and Thomas Todd said they were unaware of any serious problems between police and the community.

Both Mr. Alissandratos and Mr. Halloran, members of the three-man law enforcement committee, affirmed their belief that the majority of Memphis police were good officers but, in Mr. Halloran's words, it was apparent that some officers simply "cannot restrain themselves" from using excessive force.[199] "I think there is a percentage in the police department of individuals that do not react in a very favorable or humane way," Mr. Halloran said.[200] Both councilmen felt that Director Chapman was making an honest effort to eliminate those officers unfit for duty.

Mr. Halloran recommended that a full evaluation of the entire MPD by a professional organization, such as the International Association of Chiefs of Police, would help improve police-community relations. Such a study would identify weaknesses within the department, as well as point out the strengths of the department. The community's confidence in the department would thereby be increased, as would the confidence of police themselves. Increased communication between the city council, its law enforcement committee, and the MPD were also recommended by Mr. Halloran[201] and Mr. Davis.[202]

Councilperson Fred Davis suggested that firmer guidelines on police conduct would help improve police-community relations. More human relations training for police, strict discipline for officers who broke department rules, the creation of a special domestic crisis intervention squad, and an increase in the number of black officers, as well as their increased presence at supervisory levels would help solve problems between police and black citizens.[203]

Robert James acknowledged that he received notices from the NAACP of alleged police brutality but said the numbers and seriousness of such notices had dwindled.[204] Given the rising crime rate, he said he thought police brutality was normal. "We should almost expect it," he said, "not condone it, but expect it." He said he thought it a "marvel...that the police restrain themselves to the extent that they do."[205] Mr. James offered an explanation for this "normal" behavior on the part of the police. He submitted that some police were abnormal and therefore as police officers used excessive force which he termed "normal":

> I think police work attracts a few sadistic people. This is the nature of it. It is one of the hazards of the occupation....[206]
>
> ...quite a few of the police that are accused of brutality have had questionable behavior sometime in the past....[207]

Mr. James said he felt that black citizens did overreact to police abuse (apparently meted out by a few sadistic police) but he knew most minority persons in Memphis were frustrated:

> I don't think that the white people have the frustrations that the blacks do because they have low incomes and have got inflation and unemployment....percentagewise the blacks are in the majority of the hardship cases economically.[208]

A better system of justice which would eliminate the "revolving door" for the criminal, would relieve the frustration which Mr. James believes police feel, and it would, thereby, improve police-community relations. Mr. James also recommended better "screening of police applicants to weed out those few that do slip in that are inclined toward sadism."[209] He did not mention any role for the city council or its law enforcement committee in improving police-citizens relations.

Oscar Edmonds, chair of the city council, said he personally did not think there were any police-community problems in Memphis, although he thought some black citizens thought otherwise. He acknowledged that Director Chapmen had publicly stated that problems did exist; he supposed, however, that Mr. Chapman had "taken care" of the problems.[210]

Director of Police

E. Winslow Chapman, director of police, testified under oath, without reservation, that there definitely was a problem with police-community relations in Memphis. He described the problem as twofold: "a defensive attitude on the part of the department and the officers" and "a feeling of frustration plus some sense of misunderstanding on the part of the community...."[211] Mr. Chapman noted also that there was a particular lack of confidence in the Memphis police among black Memphians.

Director Chapman, who was appointed to office in September 1976, discussed with the U.S. Civil Rights Commission the two major steps he planned to take to improve police-community relations. First, every police officer would be made aware that physical abuse and overreaction on the part of an officer "will not be tolerated."[212] Mr. Chapman said he considered the attitude and performance of officers the primary factors which affect police-community relations, and consistently fair and professional behavior on the part of all police would have to be achieved. Mr. Chapman said that he had begun, two or three times each week, to answer police calls on a random basis and observe the performance of the police officers involved. He said he hoped that this sporadic monitoring would result in improved police conduct and services.[213]

The second step Director Chapman stated he was taking to improve police-community relations was a concerted effort to "establish rapport with the black community, to hear their problems and to respond to these problems...."[214] Mr. Chapman did not elaborate on how he intended to establish rapport with the black community. However, he did say during the Commission's May 1977 public hearing that he had considered the establishment of some type of citizen board to provide for citizen participation in police matters. He cited the Memphis affiliate of the National Council on Crime and Juvenile Delinquency as one active citizens' group which was already working with him. Mr. Chapman stated that he did "intend to get into it [consideration of opportunities of citizen-police communication] when we have the budget and negotiations [police union contract] out of the way...."[215]

Mayor of Memphis

Wyeth Chandler, mayor of Memphis since 1972, agreed with Police Director Chapman that there was a problem with police-community relations in Memphis. "I think it's [police-community relations problem] perhaps the same in every major city in the country, but I think we do have a problem."[216]

The mayor acknowledged that many black citizens, and some white citizens also, probably felt their civil rights were violated by police. Mayor Chandler believed, however, that these citizens would be more likely to say they "don't get a fair shake,"[217] rather than talking about police brutality.

In response to questions at the Commission's May 1977 public hearing about efforts to improve police-community relations in Memphis, Mayor Chandler cited the recruitment and hiring of more blacks and women as an effort that began early in his first term of office. The creation of a community relations division with the police department was another example he cited. The division is no longer in existence, he said, because Bill Crumby, Director Chapman's predecessor, believed the police personnel assigned there were needed in regular departmental operations because of the high crime rate in Memphis.[218]

The incentive for all police officers to promote good police-community relations was quite clear in the mayor's mind. He told the Commission:

> ...if a man steps out of line he is fired. He is sent home. And eventually if it happens more than once, if it recurs and the evidence is there, he is removed from the police department and finds employment elsewhere. That is the incentive to try to make everybody behave themselves and do whatever should be done.[219]

A more positive incentive cited by Mayor Chandler was inservice training where "every policemen...has been instructed on how to act."[220] Lt. William Turner, chief training officer of the MPD, said, however, that not one of the 40 hours of inservice training required of police officers each year is devoted to human relations training. (See chapter 3.)

Once again, like Director Chapman, Mayor Chandler was not opposed to the idea of citizen involvement in the police department. "I would not mind a group that would like to come down and discuss policy and have an input in the policy with either criticism or praise," he said.[221] Mayor Chandler referred to the team of citizens who worked with the city and the U.S. Department of Justice, Community Relations Service, in 1974 to negotiate some solutions to police-citizen tensions as a "very good" effort:

> ...[as] a group of citizens representing every segment of this city who make their feelings known and become a sounding board for him [director of police] in operation of the police department. As such, certainly it's [a citizens committee] acceptable.[222]

Mayor Chandler also said he regarded the office of the mayor and the city council itself as primary channels for citizen input regarding police operations.[223] Two rather specific recommendations for improving police-community relations were directed by the mayor to the citizens and the police. He urged greater patience on the part of both groups, and more cooperation on the part of citizens:

> ...I think a little more patience perhaps on both sides, the side of the police department and the side of the citizens, in particular the black citizens.[224]

> ...I would like to see every citizen...[as] proud of its police department as they should be, happy with it, working with it, cooperating with it, helping eliminate the criminal in this city. That is what I would like to see.[225]

Notes to Chapter 5

1. Maxine Smith, testimony before the U.S. Commission on Civil Rights hearing, Memphis, Tennessee, May 9, 1977, transcript, p. 224 (hereafter cited as Hearing Transcript).

2. Maxine Smith, statement before the Tennessee Advisory Committee to the U.S. Commission on Civil Rights open meeting, Memphis, Tennessee, October 8–9, 1976, transcript, pp. 373, 387 (hereafter cited as Open Meeting Transcript).

3. Ibid., p. 413.

4. For the purpose of this report, the term, "police misconduct" refers to the following categories as set forth under the heading "Types of Complaints" from records of the Memphis Police Department, Internal Affairs Bureau, subpenaed by the Commission: Physical abuse, verbal abuse, theft, conduct unbecoming an officer, neglect of duty, harassment, discourtesy, illegal arrest, illegal search, other. In referencing specific allegations of police misconduct, an attempt to identify the type of misconduct by these categories has been made.

5. Smith Statement, Open Meeting Transcript, pp. 364–65.

6. Ibid., pp. 387–88.

7. Ibid., p. 389.

8. Ibid., p. 378.

9. Ibid., p. 368.

10. Ibid., p. 375.

11. Ibid. Ms. Smith elaborated stating, "We perhaps don't file some that we should." Hearing Transcript, p. 24.

12. Smith Statement, Open Meeting Transcript, p. 368.

13. Ibid.

14. Ibid., p. 392.

15. Ibid., p. 392.

16. Ibid., p. 393.

17. Ibid.

18. Ibid.

19. Smith Testimony, Hearing Transcript, p. 27.

20. Ibid., p. 25.

21. Smith Statement, Open Meeting Transcript, p. 369.

22. Ibid., p. 374.

23. Ibid., p. 366.

24. Ibid., p. 377.

25. Ibid.

26. Ibid., p. 378.

27. Smith Testimony, Hearing Transcript p. 26.

28. Ibid., p. 57.

29. Ibid.

30. United States v. City of Memphis, No. 74-285 (U.S.D.C. W.D. Tenn., consent decree issued Nov. 27, 1974)(hereafter referred to as U.S. v. Memphis).

31. Smith Testimony, Hearing Transcript, p. 29.

32. See discussion of minority employment in chapter 3.

33. See discussion of the Afro-American Police Association in chapter 3.

34. Smith Testimony, Hearing Transcript, p. 28.

35. Smith Statement, Open Meeting Transcript, p. 367.

36. Ibid., p. 393.

37. See discussion in chapter 4.

38. Smith Statement, Open Meeting Transcript, pp. 393–94.

39. Ibid.

40. Ibid., p. 388.

41. Ibid., p. 390.

42. Ibid.

43. Ibid., p. 388.

44. Ewing Statement, Open Meeting Transcript, p. 86.

45. "National Urban League: Terms of Affiliation for Urban League Affiliates", art. 1, sec. C.

46. Herman Ewing, telephone interview, July 8, 1977.

47. Ibid.

48. Ewing Statement, Open Meeting Transcript, p. 87. Mr. Ewing was the Urban League representative on the 1974 Police-Community Negotiating Team organized by the U.S. Department of Justice, Community Relations Service; see discussion, chapter 4.

49. Ibid., pp. 88–89.

50. Ibid., p. 98.

51. Ibid., p. 107.

52. Ibid., p. 88.

53. Ibid., p. 87.

54. Ibid., p. 85.

55. Ibid., p. 88.

56. Ibid., p. 96.

57. Ibid.

58. Ibid.

59. Ibid., pp. 96–97.

60. Ibid., pp. 101–02. The city of Memphis is required to use the Urban League, among others in the recruitment of blacks and women for city employment. U.S. v. Memphis, at 15.

61. Ewing Statement, Open Meeting Transcript, p. 102.

62. Ibid., p. 84.

63. Ibid., pp. 83–84.

64. See further discussion, chapter 6.

65. Ewing Statement, Open Meeting Transcript, pp. 83–85.

66. Written Statement of Herman Ewing, presented to the Tennessee Advisory Committee to the U.S. Commission on Civil Rights, Open Meeting, Memphis, Oct. 8, 1976, p. 1.

67. Ewing Statement, Open Meeting Transcript, p. 83.

68. Ibid., pp. 84–85.

69. Written Statement of Herman Ewing, p. 2.

70. Ewing Statement, Open Meeting Transcript, p. 103.

1. See also, discussion in chapter 6.

72. Chan Kendrick, telephone interview, July 22, 1977 (Hereafter cited as Kendrick Interview).

73. Arnold Statement, Open Meeting Transcript, p. 222.

74. Kendrick Testimony, Hearing Transcript, p. 30

75. Ibid.

76. Arnold Statement, Open Meeting Transcript, p. 190.

77. Kendrick Testimony, Hearing Transcript, p. 30.

78. Ibid.

79. Kendrick Interview.

80. Kramer Testimony, Hearing Transcripts, pp. 161–62.

81. Kendrick Testimony, Hearing Transcript, pp. 31–32.

82. Arnold Statement, Open Meeting Transcript, p. 188.

83. Kendrick Testimony, Hearing Transcript, pp. 31–32.

84. Ibid., p. 32.

85. Kendrick Interview.

86. Arnold Statement, Open Meeting, Transcript, p. 192.

87. City of Memphis v. Payne, Crim. No. 28–31 (Memphis City Court Dec. 15, 1975).

88. Arnold Statement, Open Meeting, Transcript, p. 192.

89. Quoted Statement is from Kramer Testimony, Hearing Transcript, p. 159. See also: Kendrick Testimony, Hearing Transcript, p. 78; Arnold Statement, Open Meeting Transcript, pp. 220–21.

90. Wiley v. Memphis Police Department, Civil No. 73–8 (U.S.D.C.W.D. Tenn. July 15, 1975), *aff'd* 528 F. 2d 1247 (6th Cir., 1977), *petition for cert. filed*, 45 U.S.L.W. 3755, (U.S. May 10, 1977)(No. 76–1571).

91. Arnold Statement, Open Meeting Transcript, pp. 211–12.

92. Kendrick Testimony, Hearing Transcript, p. 75.

93. Ibid., p. 35.

94. Legal Services Corporation Act, 42 U.S.C. Y2996 et seq. (1976).

95. Wharton Testimony, Hearing Transcript, p. 37.

96. Wharton Statement, Open Meeting Transcript, p. 199.

97. Wharton Testimony, Hearing Transcript, p. 36.

98. Wharton Statement, Open Meeting Transcript, p. 194.

99. Ibid.

100. Ibid., pp. 195–96.

101. Wharton Testimony, Hearing Transcript, p. 37.

102. Lacey v. Jones, No. 355505 et seq. (Gen. Ses. Ct., Shelby County, Tenn.). Consent dismissal ordered Jan. 25, 1977.

103. Wharton Statement, Open Meeting Transcript, p. 197.

104. *Commercial Appeal*, Nov. 17, 1976.

105. Lacy v. Jones.

106. Wharton Statement, Open Meeting Transcript, p. 197.

107. "Agreement Between City of Memphis, Tennessee, and Memphis Police Association", art. XII, sec. 7 (p. 21). See further discussion on agreement, chapter 6.

108. Wharton Statement, Open Meeting Transcript, pp. 197–98.

109. Wharton Testimony, Hearing Transcript, p. 41.

110. Wharton Statement, Open Meeting Transcript, p. 216.

111. Wharton Testimony, Hearing Transcript, p. 41.

112. Perkins v. Chapman, No. 77–2214 (U.S.D.C. W.D. Tenn., filed Apr. 11, 1977).

113. Wharton Testimony, Hearing Transcript, pp. 38–39.

114. Wharton Statement, Open Meeting Transcript, p. 208; Hearing Transcript, pp. 83–84. See further discussion, chapter 6.

115. Wharton Testimony, Hearing Transcript, p. 72.

116. See 18 U.S.C. Y241, 242, and 245: Wharton Testimony, Hearing Transcript, p. 72.

117 Edward G. Thompson, interview in Memphis, Apr. 27, 1977.

118. Nancy Sorak, interview in Memphis, Apr. 27, 1977.

119. Ibid.

120. Thompson Testimony, Hearing Transcript, pp. 46–47; Sorak Testimony, Hearing Transcript, pp. 51–53.

121. Thompson Testimony, Hearing Transcript, pp. 46–47.

122. Sorak Testimony, Hearing Transcript, p. 51.

123. See discussion, chapter 5.

124. Sorak Testimony, Hearing Transcript, p. 51.

125. Ibid., p. 53.

126. Thompson Testimony, Hearing Transcript, p. 49.

127. Thompson Testimony, Hearing Transcript, pp. 47–48; Sorak Testimony, Hearing Transcript, pp. 53–54.

128. Thompson Testimony, Hearing Transcript, p. 48.

129. Sorak Testimony, Hearing Transcript, p. 54.

130. Thompson Testimony, Hearing Transcript, pp. 77–78; Sorak Testimony, Hearing Transcript, p. 77.

131. Thompson Testimony, Hearing Transcript, p. 49.

132. Ibid., p. 87.

133. Sorak Testimony, Hearing Transcript, pp. 52–88.

134. Thompson Testimony, Hearing Transcript, p. 71.

135. Ibid.

136. Sorak Testimony, Hearing Transcript, p. 73.

137. Thompson Testimony, Hearing Transcript, p. 50.

138. Sorak Testimony, Hearing Transcript, p. 55.

139. Elmo Baker Statement, Open Meeting Transcript, pp. 224–29.

140. Marshall Hobson Statement, Open Meeting Transcript, pp. 235–39.

141. Virginia Washington Statement, Open Meeting Transcript, p. 239.

142. Deborah Lynn Rayford Statement, Open Meeting Transcript, p. 240.

143. Rev. J.R. James Statement, Open Meeting Transcript, pp. 314–22.

144. *Press Scimitar*, Oct. 12, 1976.

145. Wyeth Chandler, interview in Memphis, Apr. 29, 1977.

146. Samuel Hollis, president, Memphis Area Chamber of Commerce, Testimony, Hearing Transcript, p. 91.

147. Hollis Testimony, Hearing Transcript, p. 90.

148. Samuel Hollis, interview in Memphis, Apr. 22, 1977 (hereafter cited as Hollis Interview).

149. Hollis Testimony, Hearing Transcript, p. 90.

150. Ibid., p. 92.

151. Hollis Interview.

152. Edward Boldt, interview in Memphis, May 2, 1977 (hereafter cited as Boldt Interview).

153. *Press Scimitar*, Apr. 27, 1977, p. 6.

154. Greater Memphis Council on Crime and Delinquency. "By Laws," Aug. 24, 1976, p. 2.

155. Newton Allen, interview in Memphis, Apr. 28, 1977.

156. Boldt Interview.

157. *Commercial Appeal*, Sept. 10, 1977, p. 1.

158. *Commercial Appeal*, Sept. 11, 1977, p. A–6.

159. Ibid.

160. Ibid.

161. Sister Mary Anne Guthrie, chairman, Women of Memphis Coalition, letter to Jay Hubbard, Feb. 14, 1973, USCCR files; Letter to Robert B. James, city councilman, Feb. 14, 1973, USCCR files.

162. Margaret Dichtel and Colvin Baird, memo to members of Memphis Inter-Faith Association Task Force, undated, USCCR files.

163. "Report on Police Brutality and Police Misconduct in Memphis, Tenn.," March 1974.

164. Ibid., p. 4.

165. Ibid., p. 5.

166. Rev. Edward Reeves, interview in Memphis, Apr. 16, 1977 (hereafter cited as Reeves Interview).

167. *Press Scimitar*, Apr. 14, 1977.

168. Reeves Interview.

169. Telephone interview, Aug. 24, 1977.

170. William Sorrell, managing editor, *Commercial Appeal*, telephone interview, Oct. 1, 1976; Ray Wilson, city editor, *Press-Scimitar*, telephone interview, Oct. 1, 1976.

171. Charles Scruggs, vice president and general manager, WDIA Radio, telephone interview, Sept. 22, 1976.

172. Bobby D. Doctor, letter to Paul Barnett, assistant news director, WREG-TV, Sept. 24, 1976; M.E. Greiner, vice president and general manager, WMC-TV, telephone interview, Oct. 4, 1976.

173. John Hohenberg, *The Professional Journalist* (New York: Holt, Rinehart and Winston, Inc., 1973), p. 570.

174. Ibid., p. 574.

175. 47 U.S.C. Y151 et seq. (1970).

176. Hohenberg, *The Professional Journalist*, p. 575.

177. Paul Barnett, interview in Memphis, Apr. 12, 1976.

178. M.E. Greiner, telephone interview, Sept. 21, 1976.

179. Wayne Trotter, urban affairs editor, *Commercial Appeal*, interview in Memphis, Apr. 11, 1976.

180. *Commercial Appeal*, Aug. 10, 1977, p. 29.

181. Don Groff, reporter, *Commercial Appeal*, telephone interview, Sept. 29, 1977.

182. Ibid.

183. *Tri-State Defender*, Aug. 1, 1977, p. 1.

184. Testimony, Hearing Transcript, p. 348.

185. *Tri-State Defender*, Apr. 24, 1976, p. 1.

186. *Tri-State Defender*, Apr. 23, 1977, p. 1.

187. Chandler Testimony, Hearing Transcript, p. 348.

188. Interview in Memphis, Apr. 15, 1977.

189. Hohenberg, *The Professional Journalist*, p. 533.

190. Emmett Marston, president, Memphis and Shelby County Bar Association, interview in Memphis, Apr. 19, 1977.

191. Brown Testimony, Hearing Transcript, p. 98.

192. Marston Testimony, Hearing Transcript, p. 96.

193. Bureau of National Affairs, Inc., "Law Week, "vol. 46, no. 8, Aug. 23, 1977.

194. North Carolina Academy of Trial Lawyers, *Law Enforcement Manuel*, August 1977.

195. A.C. Wharton, Nancy Sorak, and Edward Thompson, Testimony, Hearing Transcript, pp. 83–86.

196. Marston Testimony, Hearing Transcript, p. 104.

197. Brown Testimony, Hearing Transcript, p. 105.

198. John Ford, interview in Memphis, Aug. 11, 1976; Billy Hyman, interview in Memphis, May 2, 1977; J.O. Patterson interview in Memphis, May 4, 1977; Robert James, interview in Memphis, Apr. 29, 1977; Ed McBrayer, interview in Memphis, Apr. 29, 1977; Thomas Todd, interview in Memphis, May 3, 1977; A.D. Alissandratos, interview in Memphis, Apr. 27, 1977; Jeff Sanford, interview in Memphis, Apr. 20, 1977; Oscar Edmonds, Jr., interview in Memphis, Apr. 21, 1977; Pat Halloran, interview in Memphis, May 4, 1977; and Fred Davis, interview in Memphis, Apr. 22, 1977 (hereafter cited as Edmonds Interview, Holloran Interview, and Davis Interview, respectively). Council members Glenn Raines and Pat Vander Schoaf were not available for interviews.

199. Halloran Interview.

200. Halloran Testimony, Hearing Transcript, p. 274.

201. Ibid., pp. 288–89.

202. Davis Interview.

203. Ibid.

204. James Testimony, Hearing Transcript, p. 268.

205. Ibid., pp. 276–77.

206. Ibid.

207. Ibid., p. 283.

208. Ibid., p. 294.

209. Ibid., pp. 282–83.

210. Edmonds Interview.

211. Chapman Testimony, Hearing Transcript, pp. 300–01.

212. Ibid., p. 302.

213. E. Winslow Chapman, interview in Memphis, Apr. 19, 1977.

214. Chapman Testimony, Hearing Transcript, p. 303.

215. Ibid., pp. 303 and 311.

216. Chandler Testimony, Hearing Transcript, p. 328.

217. Ibid., p. 344.

218. Ibid., p. 330.

219. Ibid., p. 332.

220. Ibid.

221. Ibid., p. 335.

222. Ibid., p. 341.

223. Ibid., p. 335.

224. Ibid., p. 336.

225. Ibid., p. 348.

Chapter 6

POLICE MISCONDUCT—INTERNAL AND EXTERNAL REVIEW

Community Perspective of the Problem

Virtually everyone heard by the Tennessee Advisory Committee and the Commission who has been in a position to reflect and comment upon the state of police-community relations in Memphis agrees that problems do exist. On the salient factors such as the nature, extent, causes, and remedies, however, there are often sharp differences of opinion. These differences are most prevalent in the matter of police misconduct and the remedies for it. A basic dichotomy exists which may be summarized as: (1) the opinion of those persons who maintain that a pattern and practice of police misconduct of severe proportions exists in Memphis, exacerbated by the utter failure of the mechanisms designed to remedy it; and (2) the opinion of those persons who question the extent of the police misconduct and who maintain their belief and confidence that there are adequate corrective mechanisms, functioning effectively to remedy whatever police misconduct might exist.

In terms of ascertaining why this divergence of opinion exists, it is important to identify, albeit in a necessarily general fashion, those persons who espouse each opinion.

Those persons who have the first opinion are: (1) those who have alleged being victims of police misconduct and who are frustrated at the alleged failures of the remedial mechanisms; and (2) those persons (with the exception of Memphis Police Department (MPD) personnel) who have, through the course of their private and professional lives, been in positions to receive citizens' complaints of police misconduct and, in attempting to seek remedial action on their behalf, have substantiated the alleged failures of the available mechanisms to effectuate remedial action. The testimonies of several, but not nearly all, of these persons have been included in this report.

In terms of why these persons hold this opinion, it is unreasonable to suggest that they have ulterior motives for doing so. With regard to the individuals who complain of police misconduct and their frustrations at remedial action, it is difficult, if not impossible, to find reasonable motives for their opinions other than that they have felt victimized by their police and have not witnessed anything having been done about it. With regard to those persons who have been recipients of the complaints of individual citizens and who have attempted to have their complaints remedied, the responsible nature of the positions they hold in their organizations, their collective experiences which connote informed opinion, and the unanimity of their opinion despite the different functions of their organizations, all discount any reasonable identification of ulterior motives as to why they hold their opinion.

Those persons who espouse the second opinion, however, that the extent of police misconduct is not severe but even "normal" and to be expected,[1] are virtually all in positions with vested interests for holding that opinion. Virtually all are in elected or appointed positions that have direct or oversight responsibilities to ensure that MPD personnel conduct their operations in a fair and effective manner.

There remains, of course, a substantial majority of the community that, because they do not exercise any direct control over the situation and have not been directly affected by the problem of police misconduct, have not placed themselves in a position to have an informed opinion in the matter.

The purpose of this chapter is to examine both the internal (within the MPD) and external (administrative recourses outside the MPD and civil and criminal legal action) review mechanisms that are currently available to those community members who believe they have been victims of police misconduct. In identifying internal and external remedies, both the scope of the remedy as it is purported to be and its actual effectivenss in operation are examined.

As a foreword to this examination, the Tennessee Advisory Committee sets forth the following premises which are, or should be, of unquestioned validity: (1) all persons have a right to seek responsive action to complaints of police misconduct and to have valid complaints acted upon in an open and affirmative manner; (2) the responsible public officials have an obligation to ensure that effective mechanisms exist to investigate and respond to complaints of police misconduct and to ensure that appropriate corrective action is taken; (3) the community has a civic right and responsibility to be informed of the extent to which police misconduct is a problem and to take the necessary community action to ensure that public officials are exercising both the preventive and responsive steps needed to correct the problem in an open, fair, and efficient manner.

Nature of Internal and External Review

Prior to any detailed discussion of the internal and external review mechanisms that purportedly exist to remedy police misconduct in Memphis, an overview of the nature of these remedies, i.e., the scope of the remedies offered and their limitations, needs to be set forth.

Of primary significance is the fact that all internal and external remedies are basically reactionary rather than preventive in nature. They are essentially official responses to police misconduct after the fact. As stated in the President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police*,[2] "The best way to deal with misconduct is to prevent it by effective methods of personnel screening, sufficient training, constant retraining and supervision."[3]

Internal Review

Beyond the prerequisite preventive methods of police misconduct, however:

> Without question, the best means for ensuring that personnel are complying with departmental policies and general notions of fairness is through effective internal police procedures. Internal discipline can be swifter and, because imposed by the officers' own superiors, more effective. If properly carried out, internal discipline can assure the public that the department's policies concerning community relations are fully meant and enforced. This is particularly true when the department's own investigation discovers misconduct without any citizen complaint.
>
> Strong discipline shows the public that misconduct is merely the action of individual officers—the few who violate the rules in any organization—and not action which is customarily tolerated in the department. Consequently, high priority should be given to improving internal police procedures so that they can satisfy as much of the public as possible concerning their fairness and effectivenss.[4]

As the results of the MPD internal review efforts dictate (see exhibits 4, 5, and 6 and the following discussion) the critical importance of using internal review in winning the public confidence by demonstrating open, fair, and effective internal discipline has been largely unrealized in Memphis.

External Review

> In all jurisdictions, if a complainant remains dissatisfied with the internal disposition of a case, there are other avenues of appeal outside the police agency: The local prosecutor; the courts; elected officials such as councilmen or the mayor; the State's attorney general; and the U.S. Department of Justice.[5]

In addition, in Memphis the community relations commission and the civil service commission (see discussion, below) are two additional external mechanisms for limited review of police misconduct.

For a variety of reasons, not limited to the situation in Memphis, all forms of external review, to varying degrees, have been historically ineffective nationwide in coping with police misconduct in a systematic, comprehensive fashion.[6] This fact reinforces the need for a fair and effective internal review process.

An analysis of the external review mechanisms in Memphis underscores the validity of the above conclusion as to the historical ineffectiveness of external reviews of police misconduct. In summarizing in this chapter the effectivenss of external review mechanisms in Memphis, the traditional factors militating against effective external review mechanisms are compared and contrasted with the actual history of external review efforts in the Memphis community.

EXHIBIT 4

Citizen Complaints of Police Misconduct Investigated By IAB Category
(January 1, 1974–April 29, 1977)

Category	1974	1975	1976	1977 *	Totals
Physical Abuse	72	119	131	60	382
Verbal Abuse	32	29	30	9	100
Theft	53	19	26	7	105
Conduct Unbecoming Officer	135	39	40	15	229
Neglect of Duty	—	17	25	6	48
Harrassment	—	24	38	10	72
Discourtesy	17	12	14	5	48
Illegal Arrest	23	24	20	3	70
Illegal Search	15	8	3	1	27
Other	13	16	15	1	45
Total Complaints Investigated					1,126

---

* through April 29.

EXHIBIT 5

MPD Disciplinary Actions By IAB Category Resulting From IAB Investigations of 1126 Complaints

(January 1, 1974–April 29, 1977)

	Dismissal (years)				Suspension (years)				Written Reprimand (years)				Verbal Reprimand (years)				No Action (years)				Unknown (years)				Under Investigation
	74	75	76	77*	74	75	76	77*	74	75	76	77*	74	75	76	77*	74	75	76	77*	74	75	76	77*	1977*
Physical Abuse	0	0	3	0	1	3	4	3	0	2	4	0	0	0	4	0	63	102	115	17	8	12	1	2	38
Verbal Abuse	0	0	0	0	1	0	0	0	0	0	0	0	0	2	1	0	30	25	29	4	1	2	0	0	5
Theft	0	0	1	0	0	2	1	0	0	2	2	0	0	1	0	1	52	12	21	5	1	2	1	0	1
Conduct Unbecoming Officer	0	0	1	0	0	0	4	0	1	1	0	0	0	2	5	0	124	34	30	2	10	2	0	0	13
Neglect of Duty	0	0	1	0	0	0	1	0	0	0	1	0	0	0	0	0	0	15	22	3	0	2	0	0	3
Harrassment	0	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	0	21	38	7	0	1	0	0	3
Discourtesy	0	0	0	0	1	0	1	0	0	0	1	0	0	0	1	0	16	12	11	0	0	0	0	2	3
Illegal Arrest	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	17	20	20	0	6	4	0	0	2
Illegal Search	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	15	8	3	0	0	0	0	0	1
Other	0	0	0	0	0	2	0	0	0	1	0	0	1	0	0	0	7	7	15	1	5	6	0	0	0
Sub-Totals	0	0	6	0	3	7	11	3	1	8	8	1	1	5	11	1	324	256	304	39	31	31	2	4	69
Totals	**6**				**24**				**18**				**18**				**923**				**68**				**69 = 1126**

---

* Through April 29.

EXHIBIT 6

Percentages of MPD Disciplinary Actions by IAB Category Resulting From IAB Investigation of 1126 Complaints

Jan. 1974-April 29, 1977

	Physical Abuse	Verbal Abuse	Theft	Conduct Unbecoming Officer	Neglect of Duty	Harrassment	Discourtesy	Illegal Arrest	Illegal Search	Other	
Complaints Filed	382	100	105	299	48	72	48	70	27	45	= 1126
Minus Unknown and under Investigation	−61	−8	−5	−25	−5	−4	−5	−12	−1	−11	= 137
Totals	321	92	100	204	43	68	43	58	26	34	= 989

	Disciplinary Action by Number and Percent of Total by IAB Category										Totals
	Physical Abuse	Verbal Abuse	Theft	Conduct Unbecoming Officer	Neglect of Duty	Harrassment	Discourtesy	Illegal Arrest	Illegal Search	Other	
Dismissal	3 0.97%	0 0.00%	1 1.00%	1 0.05%	1 2.30%	0 0.00%	0 0.00%	0 0.00%	0 0.00%	0 0.00%	6 0.61%
Suspension	11 3.50%	1 1.10%	3 3.00%	4 2.00%	1 2.30%	0 0.00%	2 4.60%	0 0.00%	0 0.00%	0 5.90%	24 2.10%
Verbal and Written Reprimand	10 3.10%	3 3.26%	6 6.00%	9 4.41%	1 2.30%	2 2.30%	2 4.60%	1 1.72%	0 0.00%	2 5.90%	36 3.50%
											66 6.21%

*Based upon percentages of 989 complaints.

As the summary of external review effectiveness in Memphis indicates, any declaration that citizens have effective and viable alternatives to internal review of police misconduct can only be placed in the category of a "let them eat cake" response to the problem.

Memphis Police Department Internal Affairs: Police Misconduct Investigation and Discipline

As set forth in the discussion in chapter 5, both the Tennessee Advisory Committee and the Commission heard overwhelming testimony from members of the Memphis community as to the ineffectiveness and nonresponsiveness of the MPD internal affairs (i.e., investigation and discipline) process. Much of this testimony was directed at the MPD Internal Affairs Bureau (IAB), the internal organization established specifically for the purpose of investigating police misconduct. As discussed below, however, the IAB is only a component, although an important one, of the entire MPD internal affairs process. To the extent that the IAB has been singled out as the major, if not the only, reason for the ineffectiveness of the MPD internal affairs efforts, the criticism has been largely misdirected. Much more on point is the criticism which is targeted at the entire MPD internal affairs process.

As the data supplied to the Commission pursuant to subpena so dramatically reflect, (see exhibits 4, 5, and 6) instances of disciplinary action taken in response to citizen's complaints, particularly of physical abuse, have been virtually nil. With regard to the critical category of physical abuse of citizens by police officers, for example, in the period from January 1, 1974, through April 29, 1977 (time reference of the data subpenaed), there were 382 complaints of physical abuse alone filed with the IAB. Complaints of physical abuse are exclusive of those complaints separately categorized by the IAB under nine other types of complaints (see "Category" column in exhibit 4). Of the 382 complaints, 38 were still under investigation as of April 29, 1977. Of the remaining 344, the data reflect that the disciplinary actions taken in 23 complaints are unknown by the IAB. Subtracting the 38 complaints under investigation and the 23 complaints for which the disciplinary actions taken, if any, are unknown, there remains a total of 321 complaints investigated by the IAB and referred for disciplinary action to appropriate MPD supervisory personnel for which the MPD disciplinary disposition is known.

The MPD disciplinary actions taken as a result of the 321 investigations of physical abuse investigated by the IAB have resulted in a total of three dismissals (0.93 percent) of the total and 11 suspensions (3.5 percent) of the total). Verbal and written reprimands, the only other types of disciplinary actions taken, have been given in four and six instances, respectively (a combined figure which represents 3.1 percent of the total).

Based on this data, the odds of a police officer being dismissed due to an investigation of a complaint of physical abuse of a citizen are less than 1 in a 100; of being suspended, 1 in 28; of being reprimanded verbally or in writing, 1 in 29.

Analysis of why meaningful disciplinary action in response to citizens' complaints has been virtually nonexistent must include factors other than an examination of the IAB alone. One factor is the disciplinary process for which the IAB has absolutely no control. Another is the relevant provisions of the Memphis Police Association Bargaining Agreement with the City of Memphis[7] which substantially affect the ability of the IAB to compile the necessary evidentiary record to dispute or substantiate the merits of a complaint, and, therefore, ultimately impact upon the disciplinary process as well.

MPD Internal Investigation Process

The Memphis Police Department has historically maintained an entity within the department to investigate allegations of police misconduct. Officially referred to as the internal affairs bureau, the IAB is charged with investigating all citizens' complaints of police misconduct. In addition, in a low percentage of instances, the IAB investigates charges of police misconduct initiated by appropriate MPD supervisory personnel.[8]

Since May 1974, the IAB has been located in offices (100 N. Main, Room 1104) outside MPD headquarters. This move was made by order of former Police Director Jay Hubbard for the purpose of facilitating the filing of complaints by citizens who might otherwise be reluctant to do so at the MPD headquarters.

Inspector Robert Wilkinson was the commander of the IAB at the time of the Tennessee Advisory Committee's October 1976 open meeting and the May 1977 Commission hearing. According to Inspector Wilkinson,[9] the IAB staff consists of 11 commissioned police officers (including 2 black males and 1 black female) and 3 clerical support staff. All assignments to IAB are made from persons volunteering for IAB assignment and the positions are permanent, i.e., IAB officers do not routinely rotate to other MPD assignements.

Shortly after E. Winslow Chapman became director in late September 1976, he organized the IAB line of authority from the chief of police to the director (see MPD organizational chart, exhibit 2). The IAB separates complaints into nine specific categories (see exhibit 4) of misconduct and one miscellaneous category. An analysis of the computer printouts[10] furnished by the MPD in response to Commission subpena discloses that the vast majority of disciplinary actions are referenced to categorized departmental regulations,[11] written guidelines regarding police conduct. They are comprehensive and include such broad categories as "DR 105 Adherence to Law," which in effect makes any violation of law or regulation (Federal, State, county, and local) also a violation of departmental regulation.

In addition to departmental regulation violations, police officers have also been investigated and disciplined for other specifically proscribed conduct as set forth in the city ordinances of Memphis and the Memphis Civil Service Personnel Manual.[12] As illustrated by MPD General Order 12-76 Internal Discipline, many minor infractions of work rules are disposed of without the assistance of the IAB. The order provides specifically, however, that all sworn allegations of verbal or physical abuse will be directed to the IAB for investigation and that all major offenses require investigation by the IAB.

The data illustrated in exhibits 4, 5, and 6 were compiled from statistics of IAB investigations of citizen complaints and the MPD disciplinary actions taken as a result of them as prepared and submitted by IAB Commander Robert Wilkinson in response to Commission subpena. The data in the exhibits, therefore, chronicle the entire 40-month history of IAB investigations of and MPD response to investigations of police misconduct involving proscribed conduct *against citizens*. The data in the exhibits *do not* include disciplinary actions taken by the MPD for reasons other than violations of the nine categories of police misconduct as defined and listed by the IAB. Disciplinary actions for violations of "work" rules (e.g., abuse of sick leave, insubordination, property loss, etc.) are not relevant to the issue of disciplinary actions taken in response to allegations of police misconduct against citizens (e.g., physical abuse, verbal abuse, illegal arrest, etc.) and are not in any manner reflected in exhibits 4, 5, and 6.

Based upon information supplied by Inspector Wilkinson, the process in effect May 9, 1977, whereby the IAB investigates citizen complaints of police misconduct is as follows.[13]

The IAB requires a citizen who wishes to make a complaint against an officer to appear in person at the IAB office and complete and sign a sworn affidavit summarizing the charges against the officer. The IAB will not respond to anonymous complaints or complaints made by telephone. The affidavit is completed by the complainant after an interview with an IAB officer. After the complainant signs the affidavit in the presence of a notary, an IAB officer questions the complainant in an effort to solicit further evidentiary information (e.g., names of witnesses) from the complainant which will aid the IAB in its investigation. IAB officers then contact witnesses, if any, named by the complainant and take written and oral (tape recorded) testimony from witnesses or other persons ascertained to be relevant to the inquiry.

In certain instances, in particular where the complainant has no witnesses, the IAB officer will request that the complainant take a polygraph examination (administered by trained MPD personnel or, on occasion, by an independent examiner). If the complainant refuses to take the polygraph examination, the IAB will continue its investigation. In instances where there are no witnesses to substantiate the complaint, however, it is a matter of the complainant's word against the officer's. By union contract provision[14] a police officer can refuse to take a polygraph examination for any reason.

Should the IAB at any stage of investigation of a citizen complaint determine that there is probable cause to believe that the officer named by the complainant has committed a criminal offense, the

IAB is required by terms of the union contract[15] to discontinue investigation of the complaint, subject to a criminal investigation by the appropriate MPD criminal investigative branch. Subsequent to the criminal investigation, the IAB may renew its investigations to determine whether a noncriminal violation has likely occurred. Prior to any questioning of an officer pursuant to a sworn affidavit of complaint by a citizen, the IAB is required, by terms of the union contract[16] to provide the accused police officer with a copy of the signed affidavit. Upon completion of the IAB investigation, the complete results are forwarded to the various supervisory MPD personnel, depending upon the rank and duty assignment of the officer involved. By order of Director Chapman, made in September 1976, a summary of all IAB investigations (with exception of those complaints that are clearly insignificant) are forwarded to his attention. Included in each summary is a written statement of the IAB commander stating his professional opinion as to whether the IAB investigation does or does not support the complaint made. The IAB finds approximately 60 percent of its investigations do not support (i.e., "unfounded") the complaint and about 40 percent do support (i.e., "founded") the complaint.[17]

Subsequent to the IAB investigation and disciplinary action, if any, the IAB sends each complainant a form letter which states, in effect, that the police officer's commanding officer has taken the action that he considered proper. The letter also states that the complainant may come to the IAB office if he or she desires further information regarding the disposition of the complaint.

In the spring of 1977, negotiations were conducted by representatives of the Memphis Police Association and the city of Memphis regarding renewal and changes in the 1974 union contract, which was to expire as of June 30, 1977. As a result of the negotiations, the union contract was renewed, effective July 1, 1977, through June 30, 1980.[18] One of the significant changes is the revision in the IAB procedure involving investigations of police misconduct that result in, or are likely to result in, a criminal charge placed against the accused police officer(s).[19] The new procedure calls for complete investigations of all complaints, whether administrative or criminal in nature, by the IAB with assistance of an appropriate criminal investigative branch as required and requested by the IAB.

In conversation with Inspector Wilkinson of the IAB[20] and Sgt. Steve Brown, vice president of the MPA,[21] both persons agreed to the general purposes of the change in the IAB criminal investigative procedure: (1) to facilitate an orderly and timely investigation of all complaints; (2) to place full investigative authority for all citizen complaints in the independent IAB, purportedly removing conflicts of interest that might be occasioned by a criminal branch investigating "one of its own"; and (3) to attempt to gain public confidence in the entire MPD internal affairs process. The provision allowing a police officer to refuse to take a polygraph any time and without any explanation for the refusal has remained unchanged.[22]

MPD Internal Discipline Process

The MPD has written comprehensive procedures setting forth the department's handling of disciplinary matters.[23] General Order (GO) 12–76 provides that the authority for the MPD to discipline police officers is derived from "the City Charter, Ordinances, [and] the Civil Service regulations and is implicit in positions of command management and supervisory responsibility."[24]

The line of authority for administering discipline is based upon the level disciplinary action contemplated.

Director E. Winslow Chapman[25] and former Acting Chief John Holt[26] outlined the current process whereby the level of disciplinary action contemplated is determined.

Director Chapman receives all substantive IAB investigation reports together with a written summary of each investigation made by Inspector Wilkinson of the IAB. The summary includes the inspector's written opinion as to whether the complaints are founded or unfounded. Director Chapman reviews each summary and notes those investigations which he believes are serious and will warrant discipline that will require his action or subsequent review. In these instances, the director requires personal notification of the internal discipline, if any, subsequently taken. The director then meets with his immediate subordinate (formerly the chief of police; currently, the appropriate deputy director, i.e., Deputy Director for

TABLE 3

Administering Authority	Level of Disciplinary Action Authorized	Statement of Charges Required
Immediate Supervisor	Oral Admonition	Optional
Precinct/Bureau Commander	Oral thru 3 days suspension	Yes
Branch Commander (if applicable)	Oral thru 5 days suspension	Yes
Deputy Chief	Oral thru 9 days suspension	Yes
Director/Chief of Police	Oral thru termination	Yes

Operations M.S. Jones or Deputy Director for Administration James Herbert) and discusses with him the disposition of the remaining complaints.

Of the remaining investigations not identified by the director for his personal review, the deputy director may initiate disciplinary action or determine at which level of operational assignment (i.e., deputy chief, precinct commander) the disciplinary action, if any, should be administered. Often this is done on a case by case basis in discussion with the deputy chiefs of the various operational assignments.

If any disciplinary action is taken (above an "oral admonition") the accused officer must be presented with a "statement of charges," which he or she normally is granted the option of answering. In some instances, determined by the officer issuing the charges, the officer may be required to respond to the charges in writing.[27]

Procedures are available to provide an officer who has been ordered disciplined to appeal the action internally. Depending upon the severity of the disciplinary action, the appeal may be heard by an authority ranging from the officer's immediate supervisor to the director of police.[28]

At the appeal hearing, the accused officer may be represented by a union representative if he or she so requests and the MPD may be represented by its legal advisor, at the discretion of the director. The complainant is not allowed to appear or enter testimony or evidence at the hearing.[29] Subsequent to the MPD appeal hearing, an officer may appeal any disciplinary action to the civil service commission, if the action taken is at least suspension from duty for more than 10 days.[30]

With regard to the work status of an officer accused of police misconduct, GO 12–76 provides that pending investigation results, an officer remains in pay status and may continue in normal duties or be placed in non-enforcement duties or be temporarily relieved of all duties. In addition, if an officer is formally charged or indicted for a criminal offense, the officer may be suspended from duty with or without pay or dismissed.

Bargaining Agreement with City of Memphis

In July 1977 the Memphis Police Association entered into its second 3-year bargaining agreement with the city of Memphis.[31] Throughout the course of its negotiations with the MPA, the city has quite effectively combated MPA demands that would require expenditures of revenues, e.g., more police officers, higher salaries, and more promotions. That the city of Memphis needs more qualified police officers[32] and that competitive salaries are necessary to attract and keep competent and effective police personnel is without question. It is also without question that the city's current poor economic status (although possibly exaggerated by the mayor)[33] is a significant barrier to these demands.[34] In the crucial matter of internal investigations of police misconduct, however, the city, suffering no economic effects and perhaps as a tradeoff to the unheeded economic concerns of the MPA, has acquiesced considerably to the MPA demands.

In any discussion of investigation and discipline for police misconduct, there are two fundamental aspects to consider: (1) a police officer is a "trustee of the public interest"[35] and in the exercise of a critical portion of the police power of the city and State,[36] where life (and all too often) death decisions are made, the police officer must be held strictly accountable for his or her conduct in the performance of his or her duties by the public employer;[37] and (2) the acceptance of police employment does not relegate a police officer "to a watered-down version of constitutional rights."[38]

In the pursuit of effective and fair investigations of and discipline for police misconduct, these two aspects obviously require a legal and rational balance. This balance may be struck by an examination of the nature of administrative proceedings (where a police officer's employment security is in jeopardy) and criminal proceedings (where a police officer's liberty is in jeopardy).

Certain provisions of the 1977 union contract (all of which were contained in the 1974 union contract) affect the ability of the MPD to investigate police misconduct effectively and to discipline police officers. These provisions are discussed in this section with this balance in mind.

As illustrated by the discussion below, the MPAs legal rationale for certain provisions is untenable, amounting to unsupportable job security demands and in no way founded upon constitutionally-based due process considerations. The acceptance of these provisions by those city officials responsible for protecting the public interest is an abdication of their official duty.

Polygraph Examination

A provision of the union contract states: "No member shall be ordered to submit to a polygraph (lie detector) test for any reason. Such tests may be offered by Police Administration or independently requested." (art. IV, sec. 5).

The importance of this provision, as it affects the department's ability to investigate police misconduct and take appropriate disciplinary action, can best be illustrated by the testimony of Director Chapman before the Commission:

> We are faced in the vast majority of the cases where the citizen said this happened to me. The officers say that did not happen, or it didn't happen that way. You really have no basis upon which to make any substantive decision as to what you should do.
>
> This accounts for what has obviously been inferred or referred to here today, the vast number of complaints and yet the relatively small ratio of action taken. The reason is not that we don't believe it happened, but very simple that we can't prove it happened.
>
> I think that faced with a case like that we have no choice but to take no action when we can't prove anything did happen.[39]

The hard facts are that in the majority of instances where a citizen complains of police misconduct there is little evidence except the word of the complainant as opposed to the word of the officer(s) as to whether the officer had committed a wrong against the citizen. In such instances, Director Chapman has stated that the MPD has "no choice but to take no action when we can't prove it happened."[40] This impasse brings the relevancy of a polygraph examination clearly into focus; i.e., in many instances of alleged police misconduct, a polygraph examination may be the only useful investigative tool available to the department to ascertain the merits of a citizen's complaint.

With regard to the reliability of a polygraph examination, it should not be necessary here to examine its merits exhaustively. The following facts with regard to the MPD's use of the polygraph should suffice: (1) utilizing Federal funds,[41] the department has developed an "internal polygraph capability for law enforcement purposes" with professional training at the Zonn Institute of Polygraph in Miami, Florida; (2) the department administers a polygraph examination to each applicant to the MPD as a requirement for selection to the force;[42] (3) a polygraph examination is routinely utilized by the IAB (by consent of complainant and officer) in the investigation of citizens' complaints. The MPD, therefore, has demonstrated its reliance on polygraph examinations both in recruitment and complaint investigation and has developed a professional capability for doing so. Any statement by departmental personnel questioning the reliability and use of a polygraph, therefore, is clearly at odds with the department's actual practice and reliance upon it.

With regard to the constitutional rights of a police officer (particularly the right to refuse to incriminate himself or herself)there is simply no infringement of rights in compelling a police officer to take a polygraph examination on matters, "directly, and narrowly relating to the performance of his official duties,"[43] provided that the officer's answers cannot be used in a criminal prosecution.[44]

The Supreme Court, in a series of three cases,[45] has grappled with the need to make public officials (e.g., police officers) accountable for the performance of their public function and at the same time protect their constitutional rights. In the *Gardner* case, the Court ruled that a police officer cannot be discharged for refusing to waive a right (i.e., freedom from self-incrimination) that the Constitution guarantees to the officer.[46] In the *Garrity* case, the Court further established that if a police officer gives testimony because of a threat of removal from office, such testimony cannot be used against the officer in a subsequent criminal proceeding.[47]

In *Gardner*, however, the Court turned directly to the issue of a police officer's accountability to the public employer for the official performance of his or her duties and established a formula for achieving it. The Court, recognizing that a police officer "is a trustee of the public interest, bearing the burden of great and total responsibility to his public employer..." emphasized that "the policeman is either responsible to the State or to no one."[48] Accordingly, the Court stated:

> If appellant, a policeman, had refused to answer questions specifically, directly, and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, the privilege against self-incrimination would not have been a bar to his dismissal.[49]

It should be noted that the 1977 union contract does provide that an officer may be disciplined for "refusal to answer pertinent questions concerning any non-criminal matter."[50] Allowing an officer to refuse to take a polygraph examination, however, at least in those instances where it is the complainant's word against the officer's, makes a mockery of this provision. Both Sergeant Kent, MPA president,[51] and Inspector Wilkinson, IAB commander,[52] agreed that approximately 90 percent of the officers requested by the IAB to take a polygraph refuse to do so. In such instances, therefore, it is still the word of the complainant (who may, and often does, take a polygraph examination at the request of the IAB) against the uncontested word of the officer.

Procedures whereby a police officer may be compelled to take a polygraph examination, while also protecting the officer's constitutional rights, can be readily established. Where a citizen's complaint does not allege a fact situation connoting a criminal offense, no constitutional question arises. Therefore, the officer should be compelled, if necessary (i.e., no other evidence is available) to take the examination at the initiation of the IAB investigation. Where a citizen's complaint does allege a situation connoting a criminal offense, the officer should be compelled to take the polygraph examination when the criminal offense issue is disposed of, i.e., (1) upon completion of an initial investigation which results in no probably cause that a criminal violation has taken place; (2) upon decision of the appropriate prosecutor not to prosecute the charge for whatever reason; or (3) upon dismissal of charges or acquittal at a subsequent criminal prosecution. As discussed above, according to the dictates of the U.S. Supreme Court, compelled statements of an officer can never be used against him or her in a subsequent criminal hearing. The procedures of delaying compelled statements via a polygraph examination when there is probable cause to believe a crime has been committeed, therefore, is not legally necessary.

There are several reasons, however, why such procedures should be utilized. One is that the accused officer will be given extra assurance that the compelled statements will not be used in a criminal proceeding. Another is that the prosecutor, should a criminal charge be directed against the officer, will not have to contend with the defense that the officer's compelled statements, or the fruits of them, will be used in the criminal proceeding. Pending all delays, of course, the officer should be assigned nonenforcement duties or suspended, depending on the seriousness of the allegation and in accordance with existing departmental procedures.

Procedures making a polygraph examination mandatory, despite the fact that an officer has been charged and cleared of a criminal offense, are essential. It is axiomatic that an officer who may not be convicted of a criminal charge, either by a decision not to prosecute or by failure of the State to meet the burden of proof required for conviction (i.e., guilt beyond a reasonable doubt), may nonetheless be guilty of a violation of a public trust for which departmental disciplinary action should be taken.

Director Chapman has stated that the "polygraph thing has been totally blown out of proportion..." and it is not "a decisive factor because...a polygraph is not permissible as evidence in court."[53] This statement confuses the issue by ignoring the distinction between the allowable use of a polygraph in administrative proceedings, as opposed to its impermissibility in criminal proceedings. Director Chapman lapsed into non sequitur by stating that although the MPD cannot take administrative action when it fails to find sufficient proof (exacerbated by not using the polygraph), the complaints of police misconduct do not "just go by the wayside"[54] because they are often referred for criminal prosecution. Obviously, if the MPD cannot meet the burden of proof to take administrative disciplinary action (i.e., supported by a mere preponderance of the evidence), there is virtually no likelihood that a prosecutor will be able to prove guilt beyond a reasonable doubt.

The procedures set forth with regard to compelling an officer to take a polygraph examination can in no way, as dictated by the U.S. Supreme Court, conflict with the officer's constitutional rights. Should unforseen incriminating statements result from the polygraph examination, neither the statements nor the fruits of them can be used against the officer in a subsequent criminal proceeding. Accordingly, once an officer is compelled to take a polygraph examination, the officer cannot rationalize any refusal to respond, based upon a constitutional right. In such instances, the officer's refusal to respond should be recognized for what it actually is—an unacceptable refusal to be held accountable for conduct in the performance of duty.

Beyond the evidentiary value of a polygraph examination in ferreting out police misconduct, there are two other compelling reasons why a police officer should, in appropriate circumstances and according to established procedures, be required to take a polygraph examination or be dismissed for refusal to do so: (1) established procedures whereby a police officer knows in advance that his or her conduct in the performance of official duties will be strictly scrutinized and that his or her version of the facts will be tested by means of a polygraph should have a significant deterrant effect in preventing police misconduct; (2) public confidence will be greatly enhanced if the department demonstrates that it is using every reasonable means to investigate allegations of police misconduct; at the same time, this should go a long way towards demonstrating a sense of fairness to the complainant who previously, in electing to subject himself or herself to the polygraph, knew that the officer could refuse to do so with impunity.

It is syllogistic to state that being subjected to a polygraph is an unpleasant experience for both officer and complainant, and therefore its use should be avoided. It is an unfortunate fact of life in Memphis that the number of complaints of police misconduct is cause for public outrage, exceeded only by the fact that so few disciplinary actions result from them. The MPD—the entire community—cannot afford to ignore any reasonable means for making Memphis police officers accountable for their conduct in the performance of their awesome public trust. To do otherwise suggests continued ignorance of the critical problem of police misconduct in Memphis, continued acceptance of MPA demands that are contrary to the public interest, and continued abdication of civic responsibility by those public officials charged with ensuring accountability for police misconduct.

Identity of Complainant

> Before Internal Affairs interogates an officer as a direct result of a complaint by a citizen whose identity is known that citizen shall be required to sign a sworn affidavit, clearly stating the allegation, a copy of which shall be provided to the officer at the time of the interrogation. (Union contract, art. XV, sec. J.)

Prior to specific discussion on how this provision affects the ability of the MPD to investigate complaints of police misconduct, the essential importance of an adequate complaint investigation process and its impact on police-community relations needs to be set forth. The President's Commission on Law Enforcement and Administration of Justice made the following statement in this regard:

> No department can be expected to operate without some misconduct at times by some of its personnel. Every department can, however, be expected to attempt to discover its faults, correct them where possible, and learn from them. Since law enforcement is primarily a business which deals with the public and must have its trust, complaints by citizens offer a unique opportunity—a channel for communication that may otherwise not exist, a means for discovering failures to follow department policies, a method for the redress of grievances, and an early warning of larger troubles. How a department treats such complaints is a general index of its concern or lack of concern for community relations.[55]

The union contract provision is clearly at odds with the effective utilization of citizens' complaints as set forth in this statement. The provision, allowing an accused officer to know the identity of the complainant at the initial stage of IAB investigations has the following debilitating effects upon the department's ability to ferret out police misconduct. First, this procedure discourages a person who feels mistreated by a police officer from filing a complaint. Particularly in those instances where a person alleges physical abuse by a police officer (approximately one-third of all IAB investigations involve allegations of physical abuse[56] the person obviously will be reluctant to file a formal complaint, knowing that to do so may invite retaliatory action by the accused officer. Second, this fear of retaliation, far from being mere apprehension, has been a reality for certain complainants. Several persons outside of the MPD testified before the Commission that such retaliation has taken place.[57] In addition, Inspector Wilkinson, IAB commander, verified that the IAB has received, investigated, and substantiated complaints by citizens who have been, in Inspector Wilkinson's phrase, verbally if not physically "intimidated" by police officers against whom they have filed complaints.[58] Further, as discussed in chapter 5,[59] police officers have unsuccessfully sued a complainant for filing charges with the IAB. The legal merits of this suit were so weak (i.e., no allegation that the complainant acted with wilful and malicious intent) that the motives of retaliation and intimidation, rather than valid legal redress, were forcefully presented.

Sergeant Kent, MPA president, ignoring the fact that there have been incidents of retaliation by accused officers against complainants, testified that he did not believe that the sworn affidavit procedure has any inhibiting effect upon citizens who may wish to file a complaint of police misconduct. Sergeant Kent also stated that the community has a responsibility to police officers to "see that our people get due process of law."[60] According to Sergeant Kent's standard of "due process," this requires the MPD to proceed in administrative disciplinary proceedings on the same evidentiary level that is required in criminal prosecutions.[61] This contention is not only legally unsupportable, but it also ignores the responsibility of public officials to have their conduct in the performance of official duties subject to reasonable and workable investigation.

As with the discussion regarding the use of a polygraph, the issue of a police officer's constitutional rights needs to be brought into focus. In this instance, the constitutional right to face an accuser appears to be the shield offered by the MPA to support this contract provision. Again, however, as with the constitutional right to be free from self-incrimination, the right to face accusers is based upon the need to protect a person from being unduly deprived of liberty through criminal prosecution. Even in a criminal prosecution, this right is not so absolute as to require that the identity of an accuser be given to a defendant in every instance. It is established police practice to utilize "reliable informants" to gather information against an accused without the accused ever having the benefit of either knowing or questioning the informants. The basic rationale for this practice is that to inform every defendant automatically of the identity of police informants would "dry up" valuable police sources of information and seriously impair the police function of apprehending criminals.[62]

It approaches the height of sanctimony for police officers, who embrace the use of unidentified "reliable informants" against citizens in criminal prosecutions, to state that they should have an unfettered right to know the identity of persons whose complaints of misconduct may, or may not, be used as evidence in MPD administrative disciplinary proceedings.

There are clearly no constitutional dictates that require informing police officers of the identity of a complainant in departmental administrative disciplinary proceedings. Should subsequent criminal charges be placed against the officer, the officer at that time has available all of the constitutionally-based rights as defined and prescribed in the law of criminal procedure.

Further diminishing any rational basis for an officer being presented with a complaints' identity is the fact that the department never initiates disciplinary action against an officer solely on the word of a complainant. Disciplinary action is taken, if at all, only when there is other evidence to substantiate the complaint's allegations.[63] The complaint is used merely as a tool to initiate investigation and not as the basis for disciplinary action.

The practical effect of not providing an accused officer with the identity of the complainant before the officer is questioned by the IAB needs to be set forth to lend a perspective to this discussion.

In most cases, after the IAB questions the officer, the facts of the incident, without actual disclosure of the complainant's identity, will allow the officer to discern who the person is who filed the complaint. In most cases, once the officer has been questioned, there is simply no way to avoid the fact that the officer will have the information necessary to take retaliatory action against the complainant. Obviously, the MPA was aware of this fact when they successfully obtained this provision in the union contract. Two reasons may be offered why the MPA would wish to have it guaranteed in the contract. One is to ensure that in every instance the officer will be informed of the identify of the complainant. Another is to put all putative complainants on public notice that the officers will be informed of their identity should they choose to file a complaint.

To minimize the likelihood of retaliatory action by an accused officer, therefore, procedures should be established whereby in appropriate circumstances (particularly when physical abuse is alleged) the IAB will conduct an initial investigation to discern if the complainant's allegation can be substantiated by other evidence prior to questioning of the accused officer. This will serve to facilitate the assembly of an evidentiary record that might otherwise be jeopardized by the police officer's possible retaliation, and also provide the IAB with additional data upon which to question the officer.

It should be emphasized that the point of this discussion is in no way intended to infringe upon an officer's knowledge of the basis of the charge against him or her. It is simply to illustrate that the identity of the complainant is not necessary to protect the rights of the officer, but, on the contrary, there are compelling reasons why this identity should not be immediately disclosed. These reasons are to facilitate rather than discourage citizens' complaints and to reduce the likelihood of retaliation against citizens who have exercised their right to seek redress for what they believe is police misconduct.

The facts are that this union contract provision does serve to discourage citizens from filing complaints of police misconduct and has also served as a vehicle to facilitate retaliatory actions against citizens who have filed complaints. With the realization that there is simply no basis in law or fact that this provision is required or necessary to protect the rights of police officers, this provision should be recognized for what it is—a successful attempt, authorized by the public employer in violation of the public interest, to further isolate police officers from accountability for their conduct in the performance of duty.

Effective Use of Citizen Complaints

Reception of Citizen Complaints

The fundamental importance of using citizen complaints to improve police-community relations cannot be overstated. Citizen complaints serve as vehicles to discipline misbehaving officers and deter others from misbehaving.[64] Equally important is the fact that citizen complaints offer a "channel for communication"[65] between the police and the community that serves not only to facilitate better police administration, but also to enhance the confidence of the community in the department.

> Since citizen complaints are extremely important to police departments, efforts should be made to encourage citizens with grievances to file them. Unfortunately, police officers and departments often regard a citizen complaint as an attack on the police as a whole rather than a complaint against an individual officer, and therefore, attempt to discourage citizens from filing them. The discouraging of citizen complaints not only deprives a department of valuable information but also convinces the public that the kinds of practices complained about are condoned or even expected.[66]

The IAB's citizen complaint procedures, reinforced by certain provisions of the union contract, have the effect of discouraging citizens from filing complaints of police misconduct with the IAB. Except in those rare instances where an IAB investigation is requested internally, all IAB investigations are predicated upon a signed and sworn affidavit of a citizen, a copy of which is provided to the officer at the time of IAB questioning.

This process dramatically reduces the usefulness of citizen complaints. As stated in the report of the President's Task Force on Law Enforcement and Administration of Justice:

> When made, a complaint should be accepted: (1) whether reported in person, in writing, or by telephone; (2) whether made anonymously, sworn to, or in any other form; and (3) whether from the victim, an eyewitness, a person who has merely heard of the incident or an organization such as a civil rights group.
>
> ...Even if the complaining citizen wishes to drop the complaint, the department should continue its investigations, if only to prevent

> any possibility that complaining witnesses will be discouraged or intimidated.
>
> Departments should advertise widely, as [some departments] have done, that they seek out all complaints of police misbehavior of any type. Complaint forms should be available for civic organizations, civil rights groups, antipoverty agencies, and neighborhood advisory committees. Advisory committees should be constantly reminded to encourage residents with complaints to bring them forward.[67]

Publicizing Complaint Disposition

Criticism of the MPD for failing to notify either complainants or other citizens who have referred complaints to the IAB of the disposition of the complaints has been great and continues to be a significant factor contributing to poor police-community relations. The department's current use of a form letter, that contains no disposition of the specific complaint, is simply unacceptable given the fundamental importance of demonstrating to the complainant, as well as the community, that the department has the will and ability to police itself.

While the department does provide the complainant with an opportunity to be informed orally of the disposition of his or her complaint, this procedure, in addition to putting the burden on the complainant to return to the IAB, is useless in building a formal record and having it available for public scrutiny.

> Once the decision on a complaint has been made, the complainant should be notified of the decision and of the basis for it. And the public should have access to the facts of the case and the nature of the decision. Unless the public has access to reliable information, it is likely to assume the worst. On the other hand, if complainants are told of the disposition, "they would know that the Department is concerned and that their complaint was not thrown in the wastebasket."[68]
>
> In addition, when an incident or series of incidents has raised tension in an area, it will often be desirable for the determination to be announced and explained directly to the residents of the area either through the community relations unit, a neighborhood advisory meeting, or some other similar procedure. An annual report by the police department providing such facts as the number and kinds of people who made them, the disposition of the complaint, and the punishments imposed can also make a useful contribution to better public understanding.[69]

Director Chapman gave two reasons why the department refuses to notify anyone in writing as to the disposition of a citizen's complaint. The first is to avoid display of facts or an admission of wrongdoing that might be used in subsequent litigation against the officer and the department.[70] The second is to protect the rights of the officer in those instances where an officer is compelled to make statements under a promise of immunity, which precludes the use of the statements in any subsequent criminal action against the officer.[71]

Because of the strong public policy consideration which requires that the community should be aware of the department's disciplinary actions, and because of the largely illusory legal rationalizations of the reasons themselves, neither of these reasons are acceptable barriers to public disclosure. All that is needed is that the complainant be notified of the decision and the basis for it. This entails only the disciplinary action taken, in which case no further explanation is necessary, or if no disciplinary action is taken, a brief explanation as to why no action was taken.

With regard to any possible civil litigation, to the extent, if any, such information would be relevant to the law suit, it would clearly be discoverable by the plaintiff through the normal rules of discovery allowable in civil cases. With regard to criminal prosecutions, it is difficult to imagine how the nature of this information could possibly infringe upon an officer's rights. Furthermore, as discussed above, the U.S. Supreme Court has specifically ruled that neither the compelled statements of a police officer nor the fruits of them can be used against the officer in a subsequent criminal prosecution.

At any rate, the department can readily adopt procedures by which the complainant (and the public upon request) can be notified of the disposition of a complaint and at the same time protect any *legally required* rights of all concerned. To infer that disclosure is an all-or-nothing proposition is merely a self-serving misstatement of fact.

Analysis of Disciplinary Actions Taken

Response of Director Chapman

The effectiveness of the Internal Affairs Bureau is significantly impaired due to a variety of factors previously discussed. It might be assumed that when the IAB overcomes these factors and compiles an evidentiary record which supports the validity of the complaint that disciplinary action would logically result. During Director Chapman's tenure, however, the facts are that over half[72] of the complaints that the IAB commander has declared to be "founded" have resulted in absolutely no disciplinary action of any kind.

Director Chapman offered two reasons during his testimony at the Commission hearing why disciplinary action had not been taken despite the IAB's findings. The first explanation offered was that "mitigating circumstances,"[73] such as the severity of the incident and the officer's service record, would account for the fact that no disciplinary action had been taken. The second reason offered by Director Chapman was his belief that, despite the IAB commander's opinion, disciplinary action could not be taken because of the department's inability to "prove that the incident took place."[74]

The first reason offered by Director Chapman is logically supportable but obviously does not account for the majority of instances where no disciplinary action has been taken despite the finding of the IAB. Rather, in most instances no disciplinary action is taken in response to a founded complaint because of the director's alleged belief that the department cannot prove the charge. The factors (e.g., lack of the use of a polygraph examination) that adversely affect the IAB's ability to meet the necessary burden of proof have previously been discussed. Beyond the evidentiary problems, which are largely correctable, the fact that Director Chapman has ignored the findings of the IAB in 53 percent of the cases where the IAB investigations have dictated that the complaints were founded, casts severe doubt upon his willingness to effectively combat police misconduct.

Particularly in view of the fact that a police officer may appeal significant disciplinary action to the civil service board, Director Chapman's unilateral decision not to initiate disciplinary action in the majority of meritable cases casts doubt on his stated intent to discipline offending officers.

In August 1977, Director Chapman reassigned Inspector Wilkinson, IAB commander, to a post outside the IAB. According to an article in a Memphis newspaper,[75] sources close to Director Chapman stated that he had been disturbed by Inspector Wilkinson's charges against a former police officer. The director was quoted as saying that the charges were "totally unsubstantiated."

Statistical Overview

The results of the contractual and self-imposed restrictions placed upon the IAB investigations of police misconduct and the resulting inability and unwillingness of appropriate personnel to take disciplinary action are illustrated in the three exhibits incorporated into this chapter.

In 40 months the IAB investigated more than 1,100 complaints, over one-third of which were allegations of physical abuse. A total of six dismissals have resulted from these investigations, or 0.61 percent of the total investigations made for which the disciplinary actions are known. There have been 24 suspensions in the 40-month period, or 2.10 percent of the total. Therefore, less than 3 percent (i.e., 2.71 percent) of the investigations have resulted in disciplinary action above a verbal or written reprimand. Incredibly, only 3.50 percent of the investigations have resulted in verbal or written reprimands, a "disciplinary action" that results in no loss of pay or status.

Conclusion

By any measurement, these statistics expose any declaration that the Memphis Police Department is effectively responding to complaints of police misconduct as a myth. These statistics reinforce the opinions of many that the department is unwilling and unable to take effective disciplinary action against offending officers. And these statistics lend credence to the belief of many that the department has no intention of taking effective disciplinary action against officers who abuse citizens. Rather, these statistics reinforce the conviction of many people that such lack of response is tantamount to approval of police misconduct.

External Review of Police Misconduct

Administrative Review

City Council

Both the limited authority of the Memphis City Council[76] and the limited focus and success of past council efforts[77] with regard to police misconduct support the proposition that it is not a viable entity for providing dramatic improvement in police-community relations.[78] Nonetheless, the Memphis City Council does have at least two important functions which, if properly utilized, can produce a positive impact upon the situation.

The first is to exercise legislative oversight of Memphis Police Department activities. Patrick Halloran, councilman and member of the council law enforcement committee, underscored the current lack of any such oversight:

> I can't help but feel that there is a total lack of communication between the council and the council [law enforcement] committee and the department.
>
> This is a much our fault as it is theirs, but it doesn't seem to me that they have kept us advised of their needs, their progress, or their special problems. We can read about it in the paper.
>
> So, I guess we should be asking them, "How can we help you? What are your problems? What do you need? Why did this happen? How are you going to see that it doesn't happen again?"[79]

There are substantive reasons, of course, why the city council should not involve itself with the administration of the MPD, per se. The council can and should, however, exercise its legitimate and heretofore largely ignored responsibilities to ensure that, having funded "every penny's worth of tax dollars that goes to implementing the department's activities,"[80] that those activities are beneficial and in the public interest. This would not only make the MPD answerable to those elected officials charged with its funding, but also would open channels of communication between the MPD and the council and offer another avenue of public scrutiny as well.

One notable area that begs the scrutiny of the city council is the MPD investigation and discipline process. Another, not unrelated area, is the bargaining agreement (i.e., union contract) between the city and the Memphis Police Association. Both of these areas, as previously discussed in this chapter, have a significantly negative impact upon police-community relations in Memphis and are clearly in the proper scope of legislative inquiry.

The second city council function, consenting to the mayor's nominations, can also be effectively used to improve police-community relations in Memphis. This fact was illustrated in the council's unprecedented hearings on the nomination of E. Winslow Chapman to be director of police in September 1976. The hearings enabled both the council and the public to be apprised of Mr. Chapman's qualifications and his opinions on how the department should be run.

By law[81] the city council has authority to appoint, upon nomination of the mayor, the civil service commissioners. Apparently, the city council's past review of civil service commission nominees has been perfunctory. Severe criticism has been expressed by both community people and public officials against the civil service board in failing to uphold certain MPD disciplinary actions involving police misconduct.[82] Scrutiny of nominees by the council before they become commissioners will not only ensure their qualifications for office, but also provide a public record as to the nominees' philosophies on such critical areas as police misconduct.

Community Relations Commission

The purpose and function of the Memphis Community Relations Commission is largely an enigma to the Tennessee Advisory Committee and staff. The Community Relations Commission (CRC) did not send a representative to the Advisory Committee's October 1976 open meeting. Further, despite the verbal assurances of cooperation by CRC officials, subsequent to the open meeting and before and after the May 1977 Commission hearing, neither Rev. P. L. Rowe, (CRC Chairman) nor his staff were able to keep appointments to talk with staff of the U.S. Commission on Civil Rights.

The CRC was apparently established in February 1972 following the death of Elton Hayes, the black youth allegedly beaten to death by nine police officers.[83] Apparently designed to have a broad range of functions with regard to communi-

80

ty relations in general, the CRC, according to the limited evidence available to the Tennessee Advisory Committee, has had no impact with regard to alleviating police-community problems in Memphis.

According to a newspaper article,[84] the CRC was authorized by the mayor shortly after the Advisory Committee's open meeting to inform complainants of police misconduct as to the MPD disposition of complaints. It is not known to what extent, if any, this procedure was ever initiated, and, through subsequent examination of the internal affairs process, it is apparent no such procedure currently exists.

In the preparation of both the open meeting and the Commission's hearing, staff and members of the Tennessee Advisory Committee were informed by persons both within and without the MPD that the CRC was simply ineffectual. A summary of these comments is that the CRC, treated with benign neglect by city officials and held in contempt by those who have come to view it as community relations "window dressing," has atrophied to the point of uselessness. It is the sincere hope of the Tennessee Advisory Committee that with meaningful citizen input, the CRC might be reorganized and used as a positive factor in the overall community effort needed to improve police-community relations.

Civil Service Commission

The Memphis Civil Service Commission (CSC) is headed by three commissioners who serve part time and without compensation. Given nearly plenary powers under the Memphis City Code of Ordinances[85] with regard to all aspects of the civil service system, the basic function of the commissioners has traditionally been restricted to presiding on the final appeal board for city employees who have been disciplined by the various departmental supervisors.[86]

Commission Chairman Robert Fargarson said the lack of involvement of civil service commissioners, other than on the appeal board process, is because of the restricted time and energies available to part-time commissioners and the lack of adequate staff and resources to expand commissioner efforts.[87] Wade Hardy, CSC commissioner, gave his opinion of the restricted function of the commissioners:

> You have to understand that the commission, civil service commission, is primarily established to review disciplinary actions taken [against] those that are employed by the city to see to it that those who are employed, who, when they are disciplined, are given a fair administrative hearing by those that are primarily not associated with the city's day-to-day operations.[88]

With regard to allegations of police use of physical and verbal abuse, Chairperson Fargarson stated that the CSC has the authority not only to investigate why so few MPD disciplinary actions result from investigation of citizen complaints, but also to initiate investigations of the complaints as well.[89] For the reasons stated above, however, both commissioners said they have never initiated such actions.[90]

Both Mr. Fargarson and Mr. Hardy[91] said that if the MPD internal affairs process were proved ineffective, either a properly staffed and structured civil service board or another independent mechanism to review police misconduct "would definitely be of merit."[92]

As stated earlier in this chapter, the civil service board has been severely criticized for failure to uphold MPD disciplinary actions against police officers accused of physical abuse of citizens. In particular, the actions of the board in reinstating two police officers who were fired for beating a prisoner (breaking both his arms) brought criticism from Director Chapman and a local newspaper.[93]

Despite such criticism, the effect of the board's actions, generally, has been more symbolic than substantive. The facts are that the board has had occasion to review very few instances where police officers have been disciplined because of physical abuse of citizens. While approximately 60 percent of the cases before the board involve discipline of police officers,[94] very few (only three cases during the 2-year tenure of Commissioner Hardy)[95] involve police physical abuse. The miniscule number of disciplinary actions taken by the MPD against officers accused of physical and verbal abuse, as discussed previously,[96] accounts for the small number of disciplinary actions before the board. The actions of the board, therefore, muddled and misguided as they may be, are statistically insignificant when compared to the MPD's demonstrated unwillingness and inability to initiate disciplinary actions against offending officers.

Nonetheless, should the MPD begin to demonstrate effective disciplinary responses to police misconduct, the current process of the civil service board would have a proportionately negative impact upon the overall effort toward combating the problem.

A resolution was introduced in the city council to remove the three members of the board that reinstated the two police officers who had beaten a prisoner.[97] The judgment of the three board members might well be subject to question; however, such action appears to be misdirected. More on point is an examination of the civil service board process itself.

The current process of utilizing unpaid, part-time commissioners, who may or may not be qualified or experienced to preside effectively over civil service matters, to make extremely subjective judgments without benefit of any meaningful guidelines of evidentiary or administrative procedure, calls for reevaluation. For example, it might be assumed that a police officer's past employment record, if relevant, would be taken into account by the board in deciding upon the merits of the latest MPD disciplinary action before the board. Commissioner Hardy, however, has stated that "for reasons of justice"[98] the board can only deliberate on the specific incident before it to determine if the disciplinary action is justified.[99] Commissioner Fargarson, however, has stated that the board can take an officer's past record into account for the purpose of determining whether to uphold the disciplinary action before the board, but only if the officer's record is stated by the MPD to be part of the basis for the action taken.[100] These kinds of conflicting opinions are conducive to muddled and disjointed board actions.

The civil service board process, therefore, needs to be reevaluated, with particular attention given to the desired and permissible authority of the board to determine disciplinary appeals of police officers accused of physical and verbal abuse against citizens. Further, the authority, procedure, and desirability of having the civil service board act upon citizen complaints should also be studied along with alternative methods of civilian review.

The review of both MPD disciplinary actions and citizen complaints should be included in a comprehensive review of the entire Memphis Police Department conducted by a competent professional organization such as the International Association of Chiefs of Police. Additionally, an appropriate committee of a local bar association, as a demonstration of the legal profession's responsibility for improving the administration of justice, should be called upon to study and recommend appropriate rules of procedure for use in civil service board hearings.

Legal Review

Criminal Prosecution

> The relevance of the criminal law to police-community relations is limited by the fact that many forms of police misconduct affecting police-community relations, such as verbal abuse, coercion of respect, and the like, are not violations of the criminal law. It is further limited by the problem of proof and credibility of testimony. In many cases, the only witnesses to the misconduct are the policeman and the alleged victim, and often the alleged victim and nonpolice witnesses are from minority groups, are poor or unemployed, or have criminal records. Finally, many prosecutors are reluctant to bring charges except in serious cases because they work so closely with the police.[101]

Clearly, there are several factors, practical as well as political, that restrict the usefulness of criminal prosecutions as a viable tool for dealing with police misconduct. As previously discussed, there is no substitute for proper methods of preventing police misconduct *before* it occurs. Nonetheless, the restricted remedy of prosecution of police misconduct that constitutes a violation of the law should be pursued with vigor. This is necessary in order to demonstrate that no one, including police officers, are above the law, thereby ensuring public confidence as well as deterring misconduct. Furthermore, because a review of the MPD internal affairs process illustrates that police officers are able to perpetrate misconduct against citizens with virtual impunity, the necessity for criminal prosecution in appropriate circumstances is essential.

Unfortunately, all the factors that generally preclude criminal prosecution as a useful method of stopping police misconduct exist in full force in Memphis. Additionally, the following facts illustrate that criminal prosecution of police misconduct in Memphis has proved to be more myth than reality: Despite the hundreds of allegations of physical abuse by police officers reported to the MPD and a number of persons killed by police officers in recent years, the amount of criminal action brought against police, in both State and Federal courts, has been virtually nil; the number of convictions has been literally none.

State Action

The district attorney general for the Memphis and Shelby County area is Hugh Stanton, an elected official who has been in office since March 1974. There are 27 judicial districts in Tennessee, and the district attorney offices are largely autonomous, having jurisdiction to prosecute any violation of a State statute but, practically, they handle mostly felony cases, leaving misdemeanors to be handled in city court.[102] Mr. Stanton supervises a staff of 38 county prosecutors as well as 2 attorneys who process indictments. Additionally, the office has an investigative unit of 12 persons responsible for preparing and presenting information to the Shelby County grand jury.[103]

According to Mr. Stanton, the only method for ascertaining the number of Memphis police officers who have been indicted for crimes against citizens (e.g., assault and battery, homicide) would be to go through each of the approximately 6,500 to 7,000 cases handled by the district attorney general's office each year:

> We file basically by name, or we have a numbering system, but it's alphabetical...and I don't separate police cases from larceny cases, and larceny cases from murder cases.[104]

Asked to recall how many indictments have been made against police officers during his tenure, Mr. Stanton stated, "We have returned some indictments against officers for larceny and that kind of thing,"[105] but he could only recall one instance where an officer had been indicted for physical abuse of a citizen.[106]

The office relies almost exclusively upon the Shelby County Sheriff's Department and the Memphis Police Department to conduct investigations, including possible criminal police misconduct, for use in the preparation of criminal cases.[107] Mr. Stanton stated:

> The attorney general's office has 12 investigators whose primary function is to prepare cases that are pending in our criminal courts for trial, and I do not have a staff that would be adequate to investigate as thoroughly as perhaps they should be all complaints made against anyone. We refer them to the proper department in...the Memphis Police Department, and the Memphis Police Department has an internal affairs [bureau] which normally does it.[108]

Mr. Stanton added that his office has conducted investigations of police misconduct, especially when an officer has killed someone.[109] These investigations, he said, are "normally" restricted to a review of the internal affairs bureau's investigation,[110] although Mr. Stanton stated that his office will often "follow through" with additional investigative efforts as deemed necessary.[111] He explained that his office has no policy to determine what instances might require their investigation beyond the MPD investigation.

The office relies almost exclusively, therefore, upon the investigations of the MPD to determine whether an allegation of police misconduct might constitute a criminal offense. In the best of times, this process might raise questions about the efficiency of a prosecutor relying upon a department's investigation of one of its own officers. Given the history of the MPD's failure to demonstrate either the willingness or ability to take disciplinary action despite the hundreds of complaints received (40 percent of which are founded, in the opinion of IAB officials),[112] the continued reliance by the district attorney general on MPD investigations is both unworkable and inexcusable.

That the prosecutor's office may have too few investigators and must rely heavily upon the MPD to prosecute charges other than police misconduct are factors contributing to the problem. The current process, therefore, requires a significant degree of change to ensure proper attention to criminal police misconduct in Memphis.

First, the district attorney general should recognize the fact, as illustrated throughout this report, that the allegations of police misconduct in Memphis are pervasive and the MPD action in response to them is suspect. Therefore, that office can no longer rely so heavily upon the MPD for investigations of possible criminal police misconduct.

Secondly, specific steps that have been taken in other jurisdictions[113] should be initiated in the district attorney's office. A special investigative unit should be established within that office to *initiate* *and conduct independent investigations of alleged criminal police misconduct* in appropriate circumstances and in every instance of homicide involving police officers. Additional investigators should be employed as necessary. If funds are not available to hire additional investigators, the unit should be composed from the existing staff. It is difficult to imagine a more pressing priority in Memphis than investigation of criminal police misconduct. The unit should *not* include any former MPD officer. Although utilizing the results of MPD investigations, it should work independently of the MPD to ensure the objectivity of its investigations. Further, this unit should work exclusively on independent investigations of alleged criminal police misconduct and never on other investigations where the assistance of the MPD is required for successful prosecution. Specific recordkeeping on the number, nature, and results of the investigations should be maintained and made available for public scrutiny. Because it may be difficult for the local district attorney general to prosecute police officers, authority should be given to the State attorney general to pursue such cases when necessary.

These steps are the minimum necessary to address the critical problem of criminal police misconduct in Memphis. As stated in the report of the President's Commission on Law Enforcement and Administration of Justice, "The basic problem is to assure that prosecutors enforce the criminal law as vigorously against public officers as against private citizens."[114] The current process of the office of the district attorney general in investigating possible criminal police misconduct undermines this assurance.

Federal Action

The authority and scope of Federal criminal prosecution of police misconduct is substantially less than that of State and local prosecutors. Walter James Cody, III, former member of the Memphis City Council, was appointed to the position of U.S. Attorney for the Western District of Tennessee in April 1977. At the Commission's hearing, Mr. Cody described the process whereby Federal action may be initiated in response to evidence of police misconduct.

Both the local U.S. attorney and the U.S. Department of Justice, Civil Rights Division, have the authority to request the Federal Bureau of Investigation to prepare a preliminary investigation of alleged police misconduct. Mr. Cody stated that this is done either in response to a complaint or at the initiative of the U.S. attorney. Additionally, the Civil Rights Division may initiate an investigation with or without the input of the local U.S. attorney. If probable cause is found that a violation has been committed, either the U.S. attorney, the Civil Rights Division, or the two offices working in concert can seek an indictment from the Federal grand jury.[115] The principal Federal criminal statute with regard to police misconduct is 18 U.S.C. §242. This law prohibits the deprivation:

> ...under color of any law...of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States...on account of such inhabitant being an alien or by reason of his color or race.[116]

Historically, there have been few Federal prosecutions of police officers for misconduct under this or any other Federal statute. For example, in 1975 out of 9,000 complaints received nationwide by the U.S. Department of Justice, only 40 police officers faced eventual prosecution.[117] This figure includes all complaints of official misconduct for which there is a Federal law proscribing the misconduct alleged in the complaints.[118]

In a 10-year period from 1967 to 1977, there was only one Federal indictment for police misconduct sought by western district U.S. attorneys. The grand jury returned an indictment in this instance against two Memphis police officers involved in the killing of a Memphis citizen while the officers were on duty. Both officers were subsequently acquitted of the charge.[119]

There are various factors that account for the historical lack of Federal action regarding criminal police misconduct. One such factor is the judicial interpretation of 18 U.S.C. §242 that requires proof of wilful and intentional actions to deprive a person of his constitutional rights in order to support a conviction under §242. The U.S. Supreme Court in *Screws v. United States* interpreted the statute to require that the prosecutor prove not merely that the defendant had beaten a helpless prisoner to death, but that "To convict it was necessary for them to find that petitioners had the purpose to deprive the prisoner of a constitional right...."[120] Another factor has been the policy of the U.S. Department of Justice to defer to local authorities for prosecution any cases of police abuse under State law prior to involvement, if any, by the Department of Justice.

Recent developments, on both the national and local level, indicate that the dormant Federal jurisdiction over police misconduct will begin to be exercised. U.S. Attorney Cody has indicated his intention to order investigations and to prosecute appropriate instances of police misconduct by Memphis officers.[121] Evidence of this intention was illustrated by the presentment to the grand jury and the subsequent indictment of a police officer accused of beating a person incident to an arrest.[122] Additionally, U.S. Attorney Cody has been quoted as saying:

> The FBI is investigating numerous complaints that have been received, and if it appears at the end of those investigations that violations of the law have occurred, then they will be presented to the grand jury.[123]

On the national level, U.S. Attorney General Griffin Bell has stated that the Department of Justice will no longer automatically defer to local jurisdictions for prosecutions of police misconduct. The Department will, in appropriate instances, take Federal action with or without prosecution at the local level. Evidence of the Department's interest in police misconduct was illustrated by the meeting of Drew S. Days, III, Assistant Attorney General, Civil Rights Division, with black leaders in Memphis.[124] Mr. Days came to Memphis in August 1977 at the request of Mr. Cody subsequent to the shooting deaths of four black Memphians.

The general concern of the U.S. Department of Justice and the specific actions of Mr. Cody are applauded by the Tennessee Advisory Committee. These developments represent the few, if not only, meaningful and concerted efforts at combating police misconduct in Memphis. At the same time, it is extremely regrettable and a sad reflection upon the Memphis community and its leadership that Federal prosecution of police misconduct, a very limited remedy at best, represents the most viable attempt at abating this community affliction.

Civil Suits

In the President's *Task Force Report: The Police*, the following findings are made, which illustrate the limited nature and impact of civil suits as a means to combat police misconduct:

> While civil cases are more frequent than criminal cases, particularly in large cities, civil litigation also has serious difficulties. The chief witnesses are still likely to be the alleged victim and the officer. Even if a victim is successful, the officer may not be able to pay the judgment. Unless the prospect of payment is substantial, there is little incentive for the victim to incur the costs of investigation and counsel[125] necessary to the suit or for counsel to take the case on a contingent fee basis.[126]
>
> The effect of the threat of possible civil liability upon police policy is not very great. In the first place, plaintiffs are seldom able to sustain a successful lawsuit because of the expense and the fact that juries are not likely to have compassion for a guilty, even if abused, plaintiff. Insurance is also now available along with other protective methods that insulate the individual officer from financial loss.
>
> The attitude of the police administrator is to try to protect his man or the municipality from civil liability even though he may privately be critical of the actions of the officer. Usually legal counsel will instruct the police administrator to suspend departmental disciplinary proceedings because they might prejudice the litigation.
>
> Even in the unusual case where an individual is able successfully to gain a money judgment in an action brought against a police officer or governmental unit, this does not cause a reevaluation of departmental policy or practice.
>
> In general, it seems apparent that civil litigation is an awkward method of stimulating proper law enforcement policy. At most, it can furnish relief for the victim of clearly improper practices. To hold the individual officer liable in damages as a way of achieving systematic reevaluation of police practices seems neither realistic nor desirable.[127]

There have been a few limited successes in combating police misconduct in Memphis through resort to civil legal remedies. The most notable was a consent decree enjoining the illegal police practice of automatic "field interrogations" (i.e., random stop and frisk questioning) of all black males in certain Memphis neighborhoods without reasonable suspicion or probable cause to believe that a crime had been or was being committed.[128] The failures and frustrations, however, have far outdistanced the successes. The following statement of Bruce Kramer, private attorney and cooperating counsel with the American Civil Liberties Union of Tennessee, reflects the consensus of other attorneys heard by the Tennessee Advisory Committee and the Commission:[129]

> Most of your witnesses...are people who have records and do not make the ideal witness. The juries cannot relate to them.
>
> The defendants are [individual] police officers and...you [must] get by certain Supreme Court rulings [to] get the officials of the police department.
>
> And it comes down to a question of whether or not there is reasonable force used under the circumstances; I think jurors are reluctant to find, except in the most flagrant situations, that there was excessive force.
>
> In those rare instances where you get by the jury or the defendants have failed to ask for a jury trial, the awards have been very small.
>
> The plaintiffs have a feeling that the principles have been vindicated, but they are not compensated for the 2- or 3-year wait and the abuse and anxiety that they have gone through.[130]

Clearly, civil remedies for police misconduct, initially limited in scope, have proved to be largely ineffective in practice as well. Nonetheless, resort to civil remedies for police misconduct should be increased and funds should be found to support them, if for no other reason than the fact that few other viable remedies currently exist. It is evident, if regrettable, that such action is necessary in Memphis to forward positive changes in police conduct.

Notes to Chapter 6

1.Robert James, chairman, Law Enforcement Committee, Memphis City Council, testimony before the U.S. Commission on Civil Rights, hearing, Memphis, May 9, 1977, transcript, p. 276 (hereafter cited as Hearing Transcript).

2.President's Commission on Law Enforcement and Administration of Justice *Task Force Report: The Police*, Washington, D.C.: Government Printing Office, 1967 (hereafter cited as *The Police*).

3.Ibid., p. 193.

4.Ibid., pp. 193–94.

5.Ibid., p. 198.

6.For detailed analysis and commentary on effectiveness of external review, see, *The Police*, chap. 2, "External Controls," pp. 30–35 and chap. 5, "Ensuring Fairness," pp. 193–205.

7.Agreement between city of Memphis and Memphis Police Association, effective July 1, 1974 (hereafter cited as 1974 Union Contract). See chap. 3 for discussion of the Memphis Police Association.

8.Inspector Robert Wilkinson, IAB commander, stated that charges of police misconduct initiated internally without citizen complaint represent less than 5 percent of the total IAB investigations. Telephone interview, Aug. 3, 1977. (hereafter cited as Wilkinson Interview.) In referencing the data in exhibit 4 (which, among other things, lists the total number of complaints investigated by the IAB) the complaints are, therefore, termed "citizen complaints" for the sake of general reference.

9.Robert Wilkinson, interview in Memphis, May 4, 1977 (hereafter cited as Wilkinson Interview).

10.MPD Disciplinary Action Report, nos. 77123 and 77125.

11.Memphis Police Department: Policies and Regulations, May 1975.

12.Wilkinson Interview.

13.Wilkinson Testimony, Hearing Transcript, pp. 198–204; Wilkinson Interview.

14.1974 union contract, art. XII, sec. 5.

> No member shall be ordered to submit to a polygraph (lie-detector) test for any reason. Such test may be offered by Police Administration or independently requested by the officer.

15.Ibid., art. XII, sec. 4, subsec. H.

> If a member is under arrest or is likely to be, that is, if he is a suspect or the target of a criminal investigation, the investigation shall be turned over to the appropriate investigative bureau and the officer shall be given his rights pursuant to the Miranda decision or applicable law. If a member chooses to invoke his protection under the Miranda decision at that time, that member will not be subject to charges of insubordination or failure to cooperate for that reason alone.

16.Ibid., art. XII, sec. 7.

> Before Internal Affairs interrogates an officer as a direct result of a complaint by a citizen whose identity is known, that citizen should be required to sign a sworn affidavit, clearly stating the allegation, a copy of which shall be provided to the officer at the time of the interrogation.

17.Wendell L. Robinson, captain, MPD IAB, telephone interview, Aug. 11, 1977 (hereafter cited as Robinson Interview).

18.Agreement between city of Memphis and Memphis Police Association, effective July 1, 1977 (hereafter cited as 1977 Union Contract).

19.Ibid., art. XV, sec. 4, subsec. H.

> If a member is under arrest or is likely to be, that if he is a suspect or the target of a criminal investigation, the investigation shall be conducted by the Internal Affairs Bureau with the advisory and technical assistance of any appropriate investigative bureau deemed necessary, and the officer shall be given his rights pursuant to the Miranda decision or applicable law. Such advisory and technical assistance personnel from th proper investigative bureau shall not be physically involved in the interrogation process. If a member chooses to invoke his protection under the Miranda decision at that time, that member will not be subject to charges of insubordination or failure to cooperate for that reason alone.

20.Robert Wilkinson, telephone interview, Aug. 2, 1977.

21.Steven Brown, telephone interview, Aug. 2, 1977.

22.1977 Union Contract, art. XV, sec. 5.

23.Memphis Police Department, General Order 12–76, "Internal Discipline" (Mar. 18, 1976) (hereafter cited as GO 12–76).

24.Ibid., sec. 3, subsec. A.

25.Chapman Testimony, Hearing Transcript, pp. 313–14.

26.John Holt, former acting chief, currently deputy chief, investigative services division, telephone interview, Aug. 3, 1977.

27.GO 12–76, sec. 3, subsec. D.

28.Ibid., sec. 3, subsec. J.

29.Chapman Testimony, Hearing Transcript, p. 314.

30.Memphis, Tennessee, Code, Civil Service, chap. 12, §§12–18(c).

31.1977 Union Contract.

32."Of the forty-five major U.S. cities, thirty-three (73.33 percent) have more police per thousand than Memphis. Additionally, Memphis has 1.13 less police per square mile [i.e., 4.32] than the national average...." U.S. Department of Justice, Community Relations Service, "Memphis, Tennessee Police Project" (1974), p. 1.

33.*Commercial Appeal*, "For the Next Act" (editorial), Aug. 6, 1977, p. 6.

34.See discussion in chap. 2.

35.Gardner v. Broderick, 392 U.S. 273, 277 (1968).

36.See 1977 Union Contract, art. XV, sec. 1.

37.392 U.S. at 277–78.

38.Garrity v. New Jersey, 385 U.S. 493, 500 (1967).

39.Chapman Testimony, Hearing Transcript, pp. 306–07.

40.Ibid., p. 307.

41.LEAA Grant No. 72A47R 0554; Grantee: Memphis Police Department; Title: "Development of an Internal Polygraph Capability"; Award Date: Oct. 26, 1973.

42."Memphis Police Department: A Police Officer," (recruitment brochure), undated. Submitted in response to U.S. Commission on Civil Rights subpena.

43.392 U.S. at 278.

44.*Id.*

45.Garrity v. New Jersey, 385 U.S. 493 (1967); Spevack v. Klein, 385 U.S. 511 (1967); and Gardner v. Broderick, 392 U.S. 273 (1968).

46.392 U.S. at 279.

47.385 U.S. at 500.

48.392 U.S. at 277–78.

49.392 U.S. at 278.

50.Article XV, sec. 4, subsec. J.

51.Kent Testimony, Hearing Transcript, p. 184.

52.Wilkinson Testimony, Hearing Transcript, p. 181.

53.Chapman Testimony, Hearing Transcript, p. 308.

54.Ibid., p. 309.

55.*The Police*, p. 194.

56.Based on IAB data, supplied pursuant to Commission subpena, of the 1,126 complaints investigated by the IAB from Jan. 1, 1974, through Apr. 29, 1977, 382 of the complaints have alleged physical abuse, or 34 percent of the total. See exhibit 6 for complaints of police misconduct by IAB category that have been investigated by the IAB.

57.See, generally, the summary of testimony of representatives of private and public service organizations, chap. 5.

58.Wilkinson Testimony, Hearing Transcript, p. 185.

59.See summary of A.C. Wharton, executive director, Memphis and Shelby Legal Services Association, testimony, chap. 5.

60.Kent Testimony, Hearing Transcript, p. 184–85.

61.Ibid., p. 183.

62.Chapman Testimony, Hearing Transcript, pp. 300–27.

63.Ibid.

64.*The Police*, p. 174.

65.Ibid.

66.Ibid., p. 175.

67.Wilkinson Interview.

68.*The Police*, p. 195.

69.*Ibid.*

70.Chapman Testimony, Hearing Transcript, p. 317.

71.Ibid., p. 318.

72.At the Commission hearing, Inspector Wilkinson testified that he did not have the exact statistics available, but he believed that of the complaints investigated by the IAB for which he had made a written finding to the director that the investigation had revealed that complaints were founded, approximately 50 percent did not result in any form of disciplinary action (Hearing Transcript, p. 205). Director Chapman, during his testimony before the Commission, questioned Inspector Wilkinson's opinion, stating that, "I would say it's probably more like...20 to 25 percent...." (Hearing Transcript, p. 306). Inspector Wilkinson was subsequently contacted to clarify his statement. He said that a review of his records disclosed that the procedure of informing the director whether a complaint was "founded" or "unfounded" was initiated in October 1976, and through May 8, 1977, 53 percent of the founded complaints had not resulted in any disciplinary action. Telephone interview, Aug. 2, 1977.

73.Chapman Testimony, Hearing Transcript, p. 306.

74.Ibid.

75.*Commercial Appeal*, Aug. 23, 1977, p. 11.

76.See discussion chap. 2.

77.See discussion chap. 4.

78.See statements and testimony of city council members, chap. 5.

79.Halloran Testimony, Hearing Transcript, p. 289.

80.Ibid., p. 290.

81.Memphis, Tennessee, Code, Civil Service, chap. 12, §12-2.

82.See, e.g., testimony of Herman Ewing, discussed in chap. 5 and *Commercial Appeal*, Aug. 9, 1977, "Who Runs Police" (editorial).

83.Walter Evins, former CRC Chairman, interview in Memphis, Apr. 21, 1977.

84.*Press Scimitar*, Oct. 12, 1976.

85.Memphis, Tennessee, Code, Civil Service, chap. 12.

86.Ibid., §12-18.

87.Fargarson Testimony, Hearing Transcript, p. 222.

88.Hardy Testimony, Hearing Transcript, p. 229.

89.Fargarson Testimony, Hearing Transcript, p. 230; And see Memphis Code, §12-6(2).

90.Fargarson and Hardy Testimony, Hearing Transcript, pp. 231-32.

91.Ibid.

92.Hardy Testimony, Hearing Transcript, p. 232.

93.*Commercial Appeal*, Aug. 7, 1977, p. B-2.

94.Fargarson and Hardy Testimony, Hearing Transcript, p. 228.

95.Hardy Testimony, Hearing Transcript, p. 227. Note: figure is as of date of Commission Hearing, May 9, 1977.

96.See discussion, chap. 6.

97.*Commercial Appeal*, Aug. 10, 1977, p. 29.

98.Wade Hardy, interview in Memphis, Apr. 28, 1977.

99.Ibid.

100.Robert Fargarson, interview in Memphis, May 5, 1977.

101.*The Police*, p. 198.

102.Hugh Stanton, interview in Memphis, May 3, 1977.

103.Stanton Testimony, Hearing Transcript, p. 130.

104.Ibid., p. 133.

105.Ibid., p. 139.

106.Ibid.

107.Ibid., p. 128.

108.Ibid., pp. 128-29.

109.Ibid., p. 129.

110.Ibid.

111.Ibid., p. 132.

112.Robinson Interview.

113.See, *The Police*, p. 198.

114.Ibid.

115.Cody Testimony, Hearing Transcript, pp. 118-19.

116."Whoever under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if death results shall be subjected to imprisonment for any term of years or for life."

117.The statistics cited originate from national statistics prepared for inclusion in the Annual Report of the Attorney General.

118.Statistics are not kept for the number of complaints received that allege only police misconduct. According to William H. Stapleton, U.S. Department of Justice, Civil Rights Division, the greater majority of the complaints involve allegations of criminal police misconduct. Telephone interview, Aug. 2, 1977; and Drew S. Days, III, Assistant Attorney General, Civil Rights Division, letter to Mark G. Schneider, Aug. 17, 1977. (hereafter cited as Days Letter).

119.Nancy Gunter, legal technician, Office of U.S. Attorney, Western District of Tennessee, telephone interview, Aug. 5, 1977.

120.325 U.S. 91, 107.

121.Cody Testimony, Hearing Transcript, pp. 120, 149-50.

122.*Commercial Appeal*, Aug. 18, 1977, p. 27. On Oct. 13, 1977, a second indictment alleging beating of a victim by a Memphis police officer was returned in the case of United States v. Edwin Currie.

123.*Commercial Appeal*, Aug. 18, 1977, p. 27.

124.Ibid.

125."The Civil Rights Attorney Fees Awards Act of 1976" (42 U.S.C. §1988) now authorizes a federal court, in its discretion to award the winning party to certain suits (e.g., 42 U.S.C. §1983; this statute, which mirrors the federal criminal statute (18 U.S.C. §242) is the most frequently used law for civil redress of police misconduct) reasonable attorney's fees as part of the costs of bringing the suit. This law should increase the use of federal courts for vindication of rights. However, other obstacles to successful suit on police misconduct charges still prevail as stated.

126.*The Police*, p. 199.

127.*The Police*, p. 32.

128.Kramer Testimony, Hearing Transcript, pp. 163-64.

129.See also, Arnold Statement, Open Meeting Transcript, pp. 187-222; Wharton Statement, Open Meeting Transcript, pp. 187-222; and Wharton Testimony, Hearing Transcript, pp. 35-45.

130.Kramer Testimony, Hearing Transcript, p. 159-60.

Chapter 7

USE OF DEADLY FORCE

Tennessee law establishes the right of police officers to use whatever force necessary, presumably even deadly force, to make an arrest. The law reads:

> If, after notice of the intention to arrest the defendant, he either flee or forceably resist, the officer may use all the necessary means to effect the arrest.[1]

The written policies of the Memphis Police Department address an officer's right to use force given certain restrictions. Those policies are cited here in their entirety:

> Use of Force: Officers are confronted daily with situations where control must be exercised to effect arrests and to protect the public safety. Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force that is reasonable and necessary to protect others or themselves from bodily harm.[2]
>
> Self Defense and Defense of Others: The law of justifiable homicide authorizes an officer to use deadly force when it is necessary to protect himself or others from what reasonably appears as an immediate threat of great bodily harm or from imminent peril of death. The policy of the Department does not limit that law. *Under certain specified conditions*, deadly force may be exercised against a fleeing felon.[3] [emphasis added]

Nowhere in the department's *Policies and Regulations* are those "certain specified conditions" written. It might assume that conditions cited in the first paragraph, "Use of Force" apply. But that is not stated. The results of such broad State law and departmental policies appear to have been the frequent use of deadly force by Memphis police officers; use primarily employed against black Memphians. The department's own statistics [4] show that in 1969 the two persons killed by Memphis police were black men. In 1970, 11 men were killed and 8 were black; in 1971 no one was killed; in 1972, 2 persons were killed during the first 14 days of the year and both were black (statistics for the remainder of 1972 were not available). In 1973, 5 persons were killed. MPD statistics for 1973 did not list the victims' race. Of the 7 persons killed in 1974, 5 were black; in 1975, 8 men killed, 7 were black; in 1976, 4 men were killed, 2 were black. In 1977 in the course of 5 weeks, July 13 to August 17, 5 persons were killed by Memphis police and all were black.[5] Exhibit 7 displays the race and sex of persons killed in MPD shootings from 1969 through 1976 and also the "overt act or reason" given for the shootings in the MPD reports.

The MPD statistics for 1974, 1975, and 1976 reported shootings of suspects that involved both injuries and deaths. A simple display of the number of persons injured in police shootings shows that blacks are the victims in numbers disproportionate to the size of the black population in Memphis and the numbers of blacks arrested. The race and sex of persons injured in police shootings in 1974, 1975, and 1976 is shown in table 4.

Phillip Arnold, member of the board of directors of the American Civil Liberties Union of Tennessee and an attorney, cited statistics which he said clearly showed that the frequent use of firearms by Memphis police affect blacks more than whites and is, in all probability, racially motivated:

> ...we looked at its [use of deadly force] application and we found that 58 percent of the persons arrested in the city of Memphis are black; but of those persons, against whom deadly force was employed—that is, who the police shot at—87 percent were black.
>
> We got a statistition...and his analysis was that there was only one chance in ten thousand mathematical probability that race was not the factor in these disparate statistics.[6]

EXHIBIT 7

Report of Persons Killed in Shootings By Memphis Police 1969–1976 *

				Suspect's	
Year		Type Call	Overt Act/Reason	Sex	Race
1969	1.	Unknown	Assault on citizen, attempted on officer	M	B
	2.	Unknown	Fleeing burglar	M	B
1970	1.	Unknown	Fleeing burglar	M	B
	2.	Unknown	Fleeing armed robber, shot at officers	M	W
	3.	Unknown	Resisting arrest	M	B
	4.	Unknown	Resisting arrest, pointed gun at officers	M	W
	5.	Unknown	Fleeing burglar	M	B
	6.	Unknown	Fleeing armed robber, pointed gun at officers	M	B
	7.	Unknown	Fleeing scene of shooting	M	B
	8.	Unknown	Shot at officers	M	W
	9.	Still watch	Armed robber	M	B
	10.	Still watch	Armed robber	M	B
	11.	Unknown	Fleeing burglar	M	B
1971		No one killed in shootings by police officers in 1971			
		(Statistics reported only for January 1-14, 1972)			
1972	1.	Unknown	Fleeing burglar	M	B
	2.	Unknown	Fleeing—car theft	M	B
1973	1.	Shooting	Pointed rifle at officer	Unknown	
	2.	Shooting	Fired at officers	Unknown	
	3.	Armed person	Pointed rifle	Unknown	
	4.	High Speed Auto	Unknown	Unknown	
	5.	Armed person	Shot officer	Unknown	
1974	1.	Burglary	Burglary	M	B
	2.	Prowler	Burglary	M	B
	3.	Hold-up	AR	M	W
	4.	Assault	Pointed gun at officers	M	B
	5.	Prowler	Burglary	M	B
	6.	Shooting	Fired at officer	M	B
	7.	Unknown	AR	M	W
1975	1.	Personal crime	Self defense	M	B
	2.	Personal crime	Self defense	M	B
	3.	Property crime	Fleeing felon	M	W
	4.	Property crime	Fleeing felon	M	B
	5.	Personal crime	Self defense	M	B
	6.	Personal crime	Self defense	M	B
	7.	Property crime	Fleeing felon	M	B
	8.	Personal crime	Self defense	M	B
1976	1.	Property crime	Fleeing felon	M	B
	2.	Property crime	Fleeing felon	M	B
	3.	Personal crime	Self defense	M	W
	4.	Personal crime	Self defense	M	W

TOTAL: 39 persons killed, 39 males, 26 black, 8 white, 5 race unknown

---

Sources: Steve Cohen, Police Legal Advisor, memo to Police Director E. W. Chapman, September 8, 1977 and Lt. E. Brown, MPD Staff Inspector, memo to Police Director E. W. Chapman, October 3, 1977. These memos were furnished to Ira Sachs (Tennessee Advisory Committee member appointed November 1977) by Police Director E. W. Chapman in response to Mr. Sachs request for statistics on police shootings.

Statistics for January 15–December 31, 1972 were not available. Race of persons killed in police shootings in 1973 was not noted in the MPD reports.

TABLE 4

	Male		Female		Total
	Black	White	Black	White	
1974	10	1	1	0	12
1975	11	3	2	0	16
1976	8	0	1	0	9
Total	29	4	4	0	37

An article by Gerald Robin in the *Journal of Criminal Law, Criminology and Police Science* on a study of police use of firearms concluded that the frequent use of firearms is largely due to overemphasis on the danger in police work. The study cited statistics that showed the rate of police fatalities as 33 per 100,000 officers compared to a death rate of 94 per 100,000 in mining, 76 per 100,000 in construction, and 55 per 100,000 in agriculture.[7]

The report of the President's Commission on Law Enforcement and Administration of Justice states, "It is essential that all departments formulate written firearms policies which clearly limit their use to situations of strong and compelling need."[8] The guidelines recommended for firearms control, which were developed by the Presidential Commission after review of the policies of several police departments and discussions with numerous police administrators, are reprinted here in there entirety:

> 1. Deadly force should be restricted to the apprehension of perpetrators who, in the course of their crime threatened the use of deadly force, or if the officer believes there is a substantial risk that the person whose arrest is sought will cause death or serious bodily harm if his apprehension is delayed. The use of firearms should be flatly prohibited in the apprehension of misdemeanants, since the value of human life far outweighs the gravity of a misdemeanor.
>
> 2. Deadly force should never be used on mere suspicion that a crime, no matter how serious, was committed or that the person being pursued committed the crime. An officer should either have witnessed the crime or should have sufficient information to know, as a virtual certainty, that the suspect committed an offense for which the use of deadly force is permissible.
>
> 3. Officers should not be permitted to fire at felony suspects when lesser force could be used; when the officer believes that the suspect can be apprehended reasonably soon thereafter without the use of deadly force; or when there is any substantial danger to innocent bystanders. Although the requirement of using lesser force, when possible, is a legal rule, the other limitations are based on sound public policy. To risk the life of innocent persons for the purpose of apprehending a felon cannot be justified.
>
> 4. Officers should never use warning shots for any purpose. Warning shots endanger the lives of bystanders, and in addition, may prompt a suspect to return the fire. Further, officers should never fire from a moving vehicle.
>
> 5. Officers should be allowed to use any necessary force, including deadly force, to protect themselves or other persons from death or serious injury. In such cases, it is immaterial whether the attacker has committed a serious felony, a misdemeanor, or any crime at all.
>
> 6. In order to enforce firearms use policies, department regulations should require a detailed written report on all discharges of firearms. All cases should be thoroughly investigated to determine whether the use of firearms was justified under the circumstances."[9]

Police officers themselves would benefit from very specific firearms policies. They would be aware of the kinds of circumstances where their use of firearms or of deadly force would be supported by their police department. Without a very specific policy, as outlined above, the officer is vulnerable to the subjective interpretation of his or her police administrators whose interpretations may be inconsistent.

In 1972 Congressman Harold Ford of Memphis, then a State representative, introduced legislation (HB 1639) to replace the current Tennessee law that governs a police officer's right to use all means necessary to effect the arrest.[10] Mr. Ford's bill included two of the major points made in the Presidential Commission guidelines (1 and 5).

The Memphis Police Department is not restricted by Tennessee law from promulgating detailed guidelines regarding the use of firearms and of deadly force. The law reads "the officer *may* use all the necessary means...." It certainly does not compel an officer to use firearms or deadly force.

Notes to Chapter 7

1. Tenn. Code. Ann., ch. 40, §808.

2. City of Memphis, Memphis Police Department, *Policies and Regulations*, May 1975, p. 5.

3. Ibid., p. 9.

4. Steve Cohen, police legal advisory, memorandum to Police Director E.W. Chapman, Sept. 8, 1977, and Lt. E. Brown, MPD staff inspector, memorandum to Police Director E.W. Chapman, Oct. 3, 1977.

5. *Commercial Appeal*, Aug. 18, 1977, p. 1, and Aug. 19, 1977, p. 25

6. Arnold Statement, Open Meeting Transcript, p. 192.

7. U.S. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Police* (1967), p. 189.

8. Ibid.

9. Ibid., pp. 189–90.

10. Mike Honey, southern director, National Committee Against Repressive Legislation, to Concerned Individuals and Organizations in Tennessee, Feb. 29, 1972.

Chapter 8

FEDERAL FUNDING AGENCIES: CIVIL RESPONSIBILITIES

Introduction

> No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or *be subjected to discrimination under* any program or activity receiving Federal financial assistance [emphasis added]. Title VI of the Civil Rights Act of 1964.[1]

The city of Memphis and the Memphis Police Department (MPD) receive millions of Federal dollars each year. The two principal Federal agencies that channel Federal dollars into the MPD are the U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA), and the U.S. Department of the Treasury, Office of Revenue Sharing (ORS). Under Federal laws, no Federal funds may be used by a recipient in a racially discriminatory manner.

The principal vehicle prohibiting discriminatory activity by recipients of Federal funds is Title VI of the Civil Rights Act of 1964, as amended.[2] By Executive order of the President,[3] the coordination of Title VI enforcement is conducted by the U.S. Attorney General through the Federal Programs Section, Civil Rights Divison, U.S. Department of Justice.

In addition to Title VI, both the Omnibus Crime Control and Safe Streets Act of 1968, as amended[4] (administered through LEAA) and the State and Local Fiscal Assistance Act of 1972, as amended[5] (administered through ORS) contain nondiscrimination provisions[6] virtually identical to those in Title VI. Pursuant to its coordination of enforcement responsibilities under Executive Order 11764, the U.S. Department of Justice has issued regulations that establish minimum compliance responsibilities for all Federal funding agencies regarding Title VI[7] and all similar provisions in Federal grant statutes.[8]

Both LEAA and ORS, therefore, must conform their civil rights compliance regulations to afford at least the minimum standards prescribed by the U.S. Department of Justice. Pursuant to their statutory mandate under their respective enabling legislation, both LEAA[9] and ORS[10] have issued regulations governing their civil rights responsibilities. These regulations include provisions for suspension or termination of Federal funds as necessary to ensure civil rights guarantees under the law.

Despite the broad antidiscriminatory language of Title VI and the enabling statutes, both LEAA and ORS (with approval of the U.S. Department of Justice) have restricted their civil rights compliance activities basically to an oversight of equal employment guarantees, contract compliance, and discriminatory treatment in the provision of services.[11] In Memphis, neither LEAA nor ORS have conducted any compliance reviews of the MPD to ensure this limited degree of Title VI compliance.

As discussed below, the Tennessee Advisory Committee believes that all Federal funding agencies, with coordination by the Department of Justice, have a legal responsibility to ensure that recipients of Federal funds do not racially discriminate in any manner.

There is substantial evidence that the Memphis Police Department, in programs and activities funded in whole or in part by the Federal Government, is engaged in a pattern and practice of racial discrimination in the administration of justice, e.g., unwarranted physical abuse of blacks by MPD officers, that the MPD has demonstrated neither the will nor the ability to abate. If anything, such discrimination is more invidious than denial of employment opportunities. Furthermore, the need for appropriate exercise of Federal responsibilities under the law is aggravated by the fact that no viable alternatives currently exist to remedy the situation.

Level of Federal Funding

Law Enforcement Assistance Administration

The purpose of the Law Enforcement Assistance Administration is to provide funds and technical assistance to State and local governments for reducing crime and juvenile delinquency and for improving criminal justice.[12] LEAA funds awarded directly to local law enforcement recipients (other than block planning grants for the establishment and maintenance of State Planning Agencies)[13] fall into two categories: (1)Block action grants and (2) discretionary grants.[14]

During the period July 1, 1974, through September 30, 1976, the MPD received $1,203,492.15 in block action grants and $379,563.13 in discretionary grants. In addition, the Memphis/Shelby Coordinating Council, which is a local planning agency for the benefit of the Shelby County Sheriff's Department and the MPD, received $116,457.[15] It should be noted that LEAA awards grants to individuals and entities in Memphis and Shelby County other than the MPD. The above figures reflect only those funds received directly by the MPD and the coordinating council.

Despite the fact that the MPD is the largest municipal enforcement agency in Tennessee, LEAA has never conducted a compliance review of the MPD to ensure compliance with LEAA nondiscrimination regulations.[16]

Office of Revenue Sharing

The purpose of the Office of Revenue Sharing is to provide State and local governments with their share, according to an established formula, of Federal revenue for use in several broad categories. The areas for which Federal revenue sharing funds may be used are generally within the discretion of the recipient government, subject to a broad priority of use as set forth in the act.[17]

ORS accounting of revenue sharing funds is done via "Planned Use Reports" (i.e., projected use of entitlement funds as designated by the recipient government) and "Actual Use Reports." According to ORS, the city of Memphis received $29,843,244 from July 1, 1974, through September 30, 1976.[18] Of this figure, approximately $16,017,000 were expended in the category of "public safety," which includes police and fire protection.[19]

As with LEAA, despite the fact that Memphis receives the largest amount of Federal revenue sharing funds of any city in Tennessee, ORS has never conducted any kind of compliance review of the city of Memphis or the MPD to ensure compliance with ORS nondiscrimination regulations.[20]

Discrimination in the Administration of Justice

The constitutional precept of equal protection of the laws has long been held to protect individuals from the actions of public officials who discriminate in the administration of their public duties.[21]

> Though the law itself be fair on its face and impartial in appearance, yet if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.[22]

With regard to Federal funding agencies' civil rights responsibilities under Title VI and other applicable authority, there is no evidence that any Federal funding agency has interpreted their responsibilities as encompassing sanctions against a recipient agency that discriminates in the administration of justice.[23] Nor does the legislative history of Title VI offer any insight into whether Congress intended to have acts of police abuse fall within the scope of discrimination that would be a basis for revocation of funds under the act.[24]

No suitable Federal remedy currently exists to ensure that constitutionally prescribed rights of citizens are not being systematically violated by a local police agency. As discussed in chapter 6, neither civil nor criminal Federal jurisdiction with regard to police abuse is either appropriate or substantial in terms of dealing with the problem in a comprehensive manner.

Recently, Drew S. Days, III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, who has personally visited Memphis and other cities where physical abuse of citizens is a pervasive problem, stated that Federal action to withhold funds from police departments which allow police abuse is "worthy of consideration"[25] and is currently under study by the Department.[26]

Notes to Chapter 8

1. 42 U.S.C. §2000d.

2. *Id.*

3. Exec. Order No. 11764, 39 F.R. 2575(1974), reprinted in 42 U.S.C. §2000d–1.

4. 42 U.S.C. §3701, et seq.

5. 31 U.S.C. §1221–1264.

6. See 42 U.S.C. §3766 and 31 U.S.C. §1242 for nondiscriminatory provisions regarding LEAA and ORS, respectively.

7. 28 C.F.R. part 42, subpart F, "Nondiscrimination in Federally Assisted Programs" (1977).

8. 28 C.F.R. §42.401.

9. 28 C.F.R. part 42, subpart D "Nondiscrimination in Federally Assisted Programs" (1977).

10. 31 C.F.R. Part 51, Subpart E, "Nondiscrimination in Programs Funded with Entitlement Funds" (1975).

11. Internal Memorandum from USCCR, Office of General Counsel, to Mark Schneider, Southern Regional Attorney, Oct. 7, 1977 (hereafter cited as OGC Memo).

12. U.S. Commission on Civil Rights, *The Federal Civil Rghts Enforcement Effort—1974, Vol. VI, To Extend Federal Financial Assistance* (1975) p. 270.

13. Ibid.

14. Ibid, p. 272.

15. Harry D. Mansfield, director, Tennessee Law Enforcement Planning Agency, to Bobby Doctor, Director, USCCR, Southern Regional Office, Feb. 1, 1977.

16. Jeffry Covert, Compliance Officer, Office of Civil Rights Compliance, LEAA, telephone interview, Apr. 27, 1977.

17. 31 U.S.C. §1221–1264.

18. Karen Spaight, Tenn. Representative, Intergovernmental Relations' Office of Revenue Sharing, to Bobby Doctor, Jan. 24, 1977.

19. Ibid.

20. Karen Spaight, telephone interview, April 21, 1977.

21. Yick Wo v. Hopkins 118 U.S. 356 (1886).

22. *Id.* at 373–74.

23. OGC Memo.

24. Ibid.

25. *Commercial Appeal*, Sept. 1, 1977, p. 13.

26. *New York TImes*, Sept. 22, 1977.

Chapter 9

FINDINGS AND CONCLUSIONS

General

Memphis is a city plagued by a crisis in civic responsibility. The problems in police-community relations in Memphis do not exist in a vacuum but are the products of the community's failure to come to grips with a myriad of social ills. There is more than a coincidental connection, for example, between these problems and the city's poor economy, with its deteriorating downtown property values, empty buildings and hotel rooms, and largely unused convention center. The geographical, social, and economic segregation of the white and black communities and the large and disproportionate rate of black unemployment all contribute to the fact that relations between the police and the community are generally poor and critically bad with regard to the black community.

The recalcitrance and indifference of public officials and traditional community leaders in many instances mirror the failure of the majority of the community to exercise their civic responsibility for effecting positive change. These facts are not intended to be an indictment of the community or those persons who have the responsibility and capability to overcome the problems. Rather, these facts illustrate the monmumental task before the entire community in its attempt to improve police-community relations.

The Tennessee Advisory Committee believes that the community has the potential to improve the relationship between its police and the entire community. Exercise of this potential, however, must be predicated upon awareness of the problems and community resolve to deal with them. Subsequently, comprehensive efforts need to be initiated by an informed and involved citizenry to ensure that they, and especially responsibile officials and capable community leaders, are working toward ameliorating the factors that preclude healthy police-community relations.

Memphis Police Department

Police Misconduct

1. The majority of Memphis police officers are undoubtedly dedicated individuals, justifiably proud to be officers of the law and intolerant of those who abuse the public trust they are privileged to hold. In the performance of their tasks—frequently mundane, occassionaly dangerous, and always subject to public scrutiny—these officers fulfill an invaluable service to their community.

2. The Tennessee Advisory Committee believes that all Memphis police officers, and the officials responsible for their control, should be held to the standard of performance exhibited by the majority of Memphis police officers. The minority, but substantial number, of officers who abuse their public trust should not be tolerated because they, in fact, represent the exception rather than the rule. Police misconduct in Memphis is no less invidious, pervasive, or excusable by virtue of the fact that it is not perpetrated by the majority of dedicated Memphis police officers.

3. There is substantial evidence that police misconduct, from denigation of common courtesy and human dignity to overt criminal physical abuse, is both pervasive and uncontrolled in Memphis. When substantial and repeated instances of individual police misconduct are compounded by the failure of responsible officials to abate them, the distinction between what constitutes individual actions and what constitutes departmental practice becomes indiscernable. Relevant testimony and information received during the course of this study leads to the conclusion that the extent and the continous nature of police misconduct, which has been allowed to go virtually unchallenged, constitutes a pattern and practice of police misconduct within the Memphis Police Department.

4. The most prevalant kind of police misconduct in Memphis is physical abuse. In many instances, such physical abuse is exacerbated by what the

Memphis City Public Defender has termed "trumped up charges" being placed against the victims in an attempt to justify the physical abuse of citizens by the arresting officer. In addition to the testimony of the public defender, those persons outside the MPD who have had occasion to receive and review complaints of police misconduct were unanimous in their opinion that such a practice exists within the MPD. Charges such as resisting arrest, disorderly conduct, assault and battery, and interfering with a police officer are frequently made without allegations of any other kinds of crime not associated with the incident between the citizen and the officer. Specifically, the representative of the American Civil Liberties Union of Tennessee testified that monitoring 100 complaints from persons who had alleged physical abuse by police officers and who had these kinds of charges placed against them disclosed that 25 to 30 percent of the charges were ultimately dismissed, the vast majority before the charges were brought to trial. This abuse of police power not only subjects citizens to unwarranted physical abuse but to unwarranted criminal charges as well.

5. The existence, level, and nature of police misconduct in Memphis is cause for public outrage. The demonstrated inability and unwillingness of responsible officials to take action against it is also cause for grave concern.

6. The cause and effect relationship between the existence and perpetuation of police misconduct and the failure to abate it cannot be overstated. Accordingly, the single most aggravating factor accounting for the existence and level of police misconduct against Memphians, particularly black and economically disadvantaged, is the failure of the existing internal and external mechanisms which purportedly exist to prevent and combat it.

7. The extent of police misconduct in Memphis, seemingly intolerable by any community in a free society, has been allowed to exist largely because its impact is substantially upon blacks and economically disadvantaged—those persons in Memphis who have the least political and economic means to bring positive change. Conversely, the majority of the community, isolated from the more dramatic and demonstrative effects of police misconduct, has largely ignored the extent of police misconduct. This indifference has been a significant factor contributing to the perpetuation of the problem.

8. The racially disparate impact of police misconduct that is unabated and unpunished by responsible officials raises the presumption that the Memphis Police Department is engaged in a pattern and practice of racial discrimination in the administration of justice.

9. The entire community is paying the price of police misconduct. To be sure, the poor and black bear the most direct burden, but the ultimate effect is visited upon the entire community:

Race Relations: One touchstone of interracial harmony is the extent to which the local law enforcement agency demonstrates equal treatment of everyone, regardless of race, in the administration of the police function. Irrespective of the merits, which are considerable, many blacks feel victimized by members of the Memphis Police Department. The attitude that permeates the black community is one of fear and distrust of the entire white-dominated department. The inevitable spinoff effects of this attitude are debilitating to race relations in the entire community.

Citizen Cooperation: To be effective, a police department must work with each segment of the community it serves. When substantial portions of the community fear and distrust police officers, their cooperation is precluded and the department's ability to combat crime is undermined.

Departmental Image: Police misconduct, in addition to fostering poor community attitudes toward the police, affects the morale of all police officers, good and bad alike. Community distrust and fear breeds in police officers an equally defensive attitude, further deepening the hostility between the community and the department. A "them and us" mentality is fostered, polarizing the black community, in particular, and the police department into adversary rather than cooperative roles. In turn, qualified candidates for police work, black and white, are inclined to favor employment in a department that has a better community self-image.

Community Image: A police department that is viewed with indifference by the large majority of the white community (save for largely misguided demands for "law and order") on the one hand, and viewed with fear and distrust by the large majority of blacks on the other, renders proper exercise of the police function impossible. The resulting breakdown in police-community relations becomes part of the community image—as perceived from both within and without the city.

Internal Affairs: Process for Investigation and Discipline of Police Misconduct

1. The best method for *preventing* police misconduct is through effective methods of personnel screening, sufficient training, constant retraining, and supervision. The fundamental importance of this process in addressing police misconduct before it happens must be emphasized.

2. Nonetheless, the best method for *ensuring control* of police misconduct and maintaining public confidence in the department's ability to police itself is through an effective internal affairs (investigation and discipline) process.

3. Despite the critical importance of an effective internal affairs process and its impact on overall police-community relations, an examination of the MPD internal affairs process reveals that the MPD has demonstrated neither the ability to conduct investigations designed to hold police officers accountable for their conduct nor the willingness to take disciplinary actions in the majority of instances where, having overcome the restraints involved, investigation results have supported the validity of the citizen complaints.

4. How a police department treats complaints by citizens is an indication of its concern or lack of concern for police-community relations. Records commanded from the MPD pursuant to subpena of the U.S. Commission on Civil Rights and prepared by MPD Internal Affairs Bureau personnel disclose that despite having received and investigated in a 4-month period over 1,100 complaints of police misconduct against citizens, one-third of which alleged physical abuse, less than 3 percent of the investigations have resulted in subsequent dismissal or suspension of police officers.

5. The virtually nonexistent disciplinary response to citizen complaints of police misconduct should not be confused, either intentionally or inadvertently, with the fact that the MPD had disciplined police officers, in whatever numbers, for violations of departmental regulations that have nothing to do with misconduct against citizens.

6. The inability and unwillingness of the MPD to demonstrate effective actions in response to police misconduct against citizens has logically resulted in open dissatisfaction, distrust, and bitterness from those persons in the community who have attempted to have the MPD respond to police misconduct complaints.

7. Far from any degree of confidence in the MPD's willingness to police itself, portions of the community, particularly the black community, have come to regard the MPD's willingness to police itself as inherently suspect and the entire concept as unworkable. Testimony from those who have had occasion to refer literally hundreds of complaints of police misconduct, including public and private community leaders, city and county officials, blacks and whites, and testimony from individual complainants as well, support this conclusion.

Factors Accounting for Failure of MPD Internal Affairs Process

1. Several specific and related factors account for the MPD's failure, both in appearance and in fact, to demonstrate that the department has the will and ability to effectively, openly, and fairly combat police misconduct against citizens. These factors, which have been fully discussed in this report, include procedures that discourage the filing of citizen complaints, invite retaliation by accused officers against the complainants, and preclude the use of an investigative tool (polygraph) that can not only substantiate or discredit a complaint but also deter police misconduct. Further, these factors include the refusal to notify complainants in writing of the disposition of their complaint and the basis for it; the failure to provide any form of public record of the MPD's internal investigations and the dispositions of them; the department's failure to take any significant degree of effective disciplinary actions against police misconduct despite the obvious and compelling need for it.

2. The cumulative effect of these interrelated factors precludes any meaningful degree of effective departmental response to police misconduct.

3. These obstacles are not unavoidable products of an open, fair, and effective internal affairs process. Rather, they are self-imposed and result from improper official acquiescence to motives and demands contrary to the public interest. Having imposed or allowed these obstacles to exist, responsible officials have, in turn, used them as excuses for the department's inability to substantiate the vast majority of citizen complaints, thereby insulating themselves and offending officers from accountability for police misconduct.

4. Because the obstacles precluding effective internal controls of police misconduct are self-imposed, either by unilateral department practices or by acceptance of union contract provisions contrary to the public interest, they can be expeditiously removed by comprehensive official action; action which is imperative to improving police-community relations in Memphis.

Impact of Memphis Police Association Bargaining Agreement with the City of Memphis

1. The right to bargain collectively to secure employment conditions that benefit and protect employees from capricious, arbitrary, and unfair management practices is a secured right in this country.

2. A police officer does not waive any constitutional rights by virtue of his or her public employment.

3. All police officers are, however, trustees of the public interest, bearing the burden of great and total responsibility to their public employer. The public employer has the critical responsibility to ensure that police officers are held accountable for their conduct in the performance of their public trust. Police officers are either responsible to their public employer or to no one.

4. Two provisions of the Memphis Police Association's bargaining agreement with the city of Memphis (union contract) seriously inhibit the department's ability to prevent and combat police misconduct and to achieve public confidence in the department's will and ability to police itself. These provisions (1) allow police officers to refuse, with absolute impunity, a polygraph examination for any or no reason; and (2) require that an accused officer be given the identity of a complainant at the time of the interrogation of the officer.

5. The polygraph prohibition not only excludes a valuable investigative tool for which there is no substitute in many instances, but perhaps even more importantly, promotes continued police misconduct and frustrates persons who file complaints and subject themselves to a polygraph knowing that police officers may refuse to do so with impunity. According to both the MPA president and the Internal Affairs Bureau commander, over 90 percent of police officers asked to take the polygraph refuse to do so. The public pronouncements of the mayor and director of police that police misconduct will be severely dealt with are directly at odds with the acceptance of this union contract provision.

6. The requirement that a police officer be told the identity of the complainant, and its full implementation by the MPD (i.e., that the IAB will only investigate signed and sworn affidavits of complaints by citizens) has the following debilitating effects: (a) ignores the extreme importance to the department of the valuable information to be gained by accepting all citizen complaints, no matter how lodged or by whom; (b) inhibits citizens who fear retaliation from police officers but want to file a complaint; (c) has, in fact, been demonstrated as a vehicle to provide officers with information necessary to take retaliation; (d) undermines public confidence in the department's will and ability to police itself; and (e) as with the polygraph prohibition, constitutes a successful attempt, authorized by the public employer in violation of the public interest, to further isolate police officers from accountability for their conduct in the performance of duty.

Substantial Improvements Required

The Advisory Committee concludes that substantial changes must be made in the MPD internal affairs process before police-community relations in Memphis can be improved. While an effective internal affairs process will not solve all the problems confronting the department and the community, it would be the keystone for overall improvement in the department.

Use of Deadly Force

1. It is an established fact that police officers in Memphis as elsewhere in the country must be proficient in the use of firearms to protect themselves and others from death or serious injury. When deadly force is or is likely to be perpetrated against an officer or citizen, the officer must be allowed to use any force necessary including deadly force, to control the situation.

2. Given the literally life and death responsibility entrusted to police officers, the Advisory Committee finds that it is imperative that a police department establish specific policies with regard to the use of deadly force that clearly limit its use to situations of compelling need.

3. The Memphis Police Department has neither restricted the use of deadly force to situations of compelling need nor adopted specific policies with regard to its permissable use.

4. Operating under the authority of State law that *allows* but does not *require* the use of deadly force in situations not limited to defense of life, the Memphis Police Department has compiled a grisly record of carnage resulting from the use of deadly force by departmental personnel. The unrestricted application of the State law is aggravated by vague and conflicting MPD policies regarding the permissible use of deadly force.

5. Of the number of persons known to have been killed by Memphis police officers during the period 1969 through 1976, nearly 40 percent of the deaths were justified by the department because the victims were "fleeing felons."

6. Allowing a police officer to use deadly force against persons in situations other than when there is a substantial risk of death or serious bodily harm illustrates a perference for property over human life.

7. Even assuming that there is logic in the explanation that the use of deadly force against a "fleeing felon" is a means to deter crime, an equally logical argument is presented that such a law has the counterproductive effect of encouraging potential felons to arm themselves to combat the deadly force used by police officers. The term "fleeing felon" is in itself a misnomer, presupposing the guilt of a suspect.

8. Memphis Police Department statistics that reflect the race of persons killed by Memphis police officers from 1969 through 1976 (excluding five persons killed in 1973 whose race is not identified and exclusive of the period January 15 through December 31, 1972, for which no deadly force statistics are available) disclose that of 39 persons killed by Memphis police officers, 26 were black. Of the approximately 15 persons who were killed because they were ostensibly "fleeing felons," all but one were black. In 1977 (for which complete statistics are not available) in one 5-week period alone five persons were killed; all were black.

9. Analysis of the use of deadly force by Memphis police officers discloses that blacks have been the victims of deadly force in percentages vastly out of proportion to *both* their presence in the Memphis population and the percentage of blacks arrested.

Community Relations Training and Structure

Training

1. The most basic approach toward achieving and maintaining a police department whose personnel are able and committed to exercising authority fairly as well as effectively is through appropriate and formal training mechanisms.

2. Comprehensive, mandatory, and continuous training in the area of police-community relations for sworn personnel—recruits, patrol officers, supervisors and commanders—is of fundamental importance and prerequisite to successful performance of the police function.

3. The Advisory Committee finds that police-community relations training should be designed to: improve the image of the police through proper conduct, including methods to promote courtesy and avoid physical and verbal abuse and discrimination; further police understanding of the various kinds of groups and individuals that the police contact in their pluralistic community; and change attitudes and prejudices.

4. Despite the obvious and admitted historical and continuous problems between the police and the community, the MPD provides recruits with less than minimal (e.g., 36 hours out of a curriculum of 480 hours in the last academy-trained class) "human relations" training. Incredibly, the MPD has absolutely no provisions for in-service police-community relations training.

Community Relations Unit

1. A central unit within a police department responsible for the coordination and administration of the entire department's community relations effort is essential in order to provide substance and continuity to the process.

2. The MPD previously established, then disbanded, a separate community relations division within the department. The reason cited by the mayor for its demise was the need to use the personnel in regular departmental operations because of the high crime rate in Memphis.

3. Director Chapman has expressed his intention to improve police-community relations through personal contact and communication with all segments of the community and by impressing upon

each police officer that he or she is individually responsible for promoting better relations with the community. These are commendable goals. Without formal mechanisms to coordinate and implement them, however, realization of the goals is doubtful.

Public Officials and Community Leaders

The history of police-community relations in Memphis, with few exceptions, is replete with examples of the indifference of public officials toward the critical problem of police-community conflict. Beyond their reluctance to take positive action to prevent further conflict, officials have made only token efforts, such as the city council investigation in 1972 and their "cooperation" with other investigations, to explore the relations between police and citizens. Their subsequent failure to take positive action has served to frustrate members of the community who want their police department to be the finest possible. It has also reassured those members of the police department and the community who perpetrate and promote acts of brutality that they will continue to be protected and their actions tolerated.

The efforts of various civil rights and other community groups to improve police-community relations have been noble but ineffective. General public apathy and recalcitrance on the part of public officials are the major reasons community efforts have failed to have any genuine impact.

The Mayor of Memphis

1. The strong mayoral form of government in Memphis places responsibility on the mayor to be the symbolic as well as substantive force for improving police-community relations on behalf of all segments of the community. The mayor must not only recognize and acknowledge that problems do exist, but he or she must define them and establish the necessary mechanisms, with advisory comment and assistance from the entire community, to ensure that the problem will be solved with the legitimate interests of the entire community as the basis for change.

2. The Tennessee Advisory Committee concludes that Mayor Wyeth Chandler has failed to demonstrate the leadership needed to improve police-community relations. His failure to recognize the full scope and severity of police-community problems, compounded by the lack of positive action despite compelling need, has served to aggravate those problems. Despite the overwhelming evidence of systemic problems between the police and citizens displayed through several past efforts, including the 1972 city council committee investigation and the 1974 U.S. Department of Justice, Community Relations Service study, Mayor Chandler displays a defensive attitude toward the police-community relations study launched by the Tennesse Advisory Committee in 1976 and contends that problems between Memphis police and citizens are no worse than those in other cities. The August 1977 visit of Drew S. Days, III, Assistant U.S. Attorney General, to show his concern about police-community problems in Memphis clearly denies the validity of the Mayor's contention.

3. The Tennessee Advisory Committee finds that Mayor Wyeth Chandler has failed to use the city council and the mayor-council relationship as an effective means to help solve police-community problems in Memphis. Mayor Chandler has not solicited the council's assistance in solving these problems, nor has he sought the council's advice prior to making appointments to jobs directly related to the police, such as the police director and members of the civil service commission.

4. Mayor Chandler has failed to provide an effective forum for continuous constructive communication on police-community problems between the office of the mayor, police officials, and representatives of the community. The Memphis Community Relations Commission, formed in 1972 during Mayor Chandler's first term of office, is a mere "window dressing" agency which does not deal with problems facing the community as it was intended to do. The August 1977 visit of the Assistant U.S. Attorney General did prompt Mayor Chandler to meet with citizen leaders and discuss police-community problems. Such ad hoc responses, however, are not sufficient to deal with the critical problem facing Memphis.

The City Council

1. The Tennessee Advisory Committee finds that the City Council of Memphis exercises little of its legislative oversight responsibility with regard to the Memphis Police Department.

2. The Advisory Committee finds that the city council fails to exercise its authority to screen thoroughly persons appointed to office by the mayor. With the exception of a public interview with Police Director Chapman prior to his confirmation, the council has not taken seriously its power to confirm or deny mayoral appointments.

3. The part-time status of council members and the council's limited professional staff (two persons) greatly limit the work of the council. Although the council, by virtue of its control of the city budget, could expand its staff and therefore its own ability to serve Memphis, it has failed to take any action to do so.

4. The Advisory Committee finds that city council members, with few exceptions, have ignored complaints of police misconduct. Despite the numerous studies dating back to 1972 that have identified specific problems between police and citizens, and complaints from community groups as well as individuals, the city council has failed to become involved in solving the problems. The 1972 investigation of police misconduct by the city council's own special committee did not even prompt action by the lethargic city council.

5. The city council, like the mayor, has not provided or maintained an effective forum for continuous and constructive communication regarding police-community relations problems among city and police officials and leaders of the community.

Director of Police

1. The Tennessee Advisory Committee finds that Police Director E. Winslow Chapman is, first of all, in an unenviable position. Director Chapman inherited a police department that for years has had poor relations with a large segment of the community. He is faced with the need for internal change not only in attitude but in operation as well. The job of director is further complicated by the ever building pressure of community groups that demand dramatic improvements in police-community relations.

2. The Advisory Committee finds that Director Chapman exhibits a healthy attitude and philosophy toward police services and the relations between police officers and citizens. He openly condemns police misconduct and has, on occasion, acted swiftly to discipline some officers who abused their power. It appears he is making sincere efforts to communicate with all segments of the community.

3. The Advisory Committee also finds, however, that Director Chapman's efforts are hampered by the conflicting interests involved in improving police-community relations: the civil service commission, the police union (Memphis Police Association), and the black community.

4. Despite Director Chapman's good intentions, the Advisory Committee concludes that where internal investigations of police misconduct are concerned, there has been no positive change since Director Chapman took office in September 1976. The Internal Affairs Bureau of the MPD is still not able to conduct a comprehensive investigation of a complaint against an officer. In an inordinate number of cases (53 percent) where the MPD's Internal Affairs Bureau has found cause for disciplinary action against a police officer, Director Chapman has failed to discipline the officer.

5. The Advisory Committee concludes that matters critical to the improvement of police-community relations demand but are not getting the attention of the police director. The MPD's demonstrated unwillingness and an inability to investigate police misconduct properly and to take appropriate disciplinary action are the most critical of those matters. Revisions of inservice training and review of the department's written policies regarding the use of force are among other important matters.

6. The Advisory Committee finds Director Chapman's new policy a good one that requires an officer who has been suspended from duty and who has not been given a psychological evaluation in the past 12 months, to undergo such an evaluation before returning to duty. Director Chapman is commended for insisting on such evaluations in the interest of the community, as well as for the good of police officers who may need professional medical treatment.

7. The Advisory Committee notes that since Director Chapman assumed office two black officers have been promoted to positions never before filled by blacks. While it is good that the MPD recognizes the abilities of the two officers, and unlike his predecessors Director Chapman promotes capable black officers, the Advisory Committee hopes, (as similarily expressed by

Mayor Chandler in November 1976) that the promotions of black officers will not be so newsworthy in the future—that they will occur and be regarded as a matter of course.

Civil Service Commission

1. Given nearly plenary powers in the Memphis City Charter with regard to all aspects of the civil service system, the basic function of the civil service commissioners has been limited to presiding on the final appeal board for city employees who have been disciplined by the various departmental supervisors.

2. Nominated by the mayor, subject to appointment by the city council, the commissioners serve part-time and without compensation. The civil service commission is composed of three commissioners with alternates serving in their absence.

3. The civil service commission has been openly criticized for its failure to uphold certain Memphis Police Department disciplinary actions. While approximately 60 percent of the cases before the commission involve discipline of police officers very few, however, and only three cases during the first 2 years of Commissioner Wade Hardy's tenure, involved discipline for physical abuse. The miniscule number of disciplinary actions taken by the MPD against officers accused of physical and verbal abuse accounts for the few disciplinary actions before the civil service commission.

4. Nonetheless, should the MPD begin to initiate more disciplinary actions for reasons of misconduct, the current civil service process could have a proportionately negative impact upon the overall effort toward combating police misconduct.

5. In general, the current process of using unpaid, part-time commissioners, who may or may not be qualified or experienced to preside over civil service matters and make decisions without meaningful guidelines of evidentiary or administrative procedure, calls for reevaluation.

District Attorney General

1. It is the practice of the district attorney general's office of Memphis and Shelby County to rely on the investigations of the MPD's Internal Affairs Bureau to apprise it of cases that warrant criminal investigation. The Tennessee Advisory Committee finds that, given the inability of the MPD internal affairs unit to investigate citizen complaints of police misconduct, it is unreasonable for the district attorney general to rely on those investigations and the information generated by them.

2. Criminal prosecution by the district attorney general against Memphis police officers for police misconduct is virtually nonexistent. District Attorney General Hugh Stanton recalled that since 1974, when he assumed office, only one case where an officer has been indicted for physical abuse of a citizen has been handled by his office. There have been no convictions.

3. The district attorney general's office relies almost exclusively upon the investigations of the MPD to determine whether an allegation of police misconduct might constitute a criminal offense.

4. On occasion, the district attorney general will choose to go beyond the MPD's IAB investigation, but there is no definite policy to determine when he will do so.

5. Given the history of the failure of the MPD to demonstrate either the willingness or ability to take disciplinary action, despite the literally hundreds of complaints of police abuse received, the continued reliance by the district attorney general MPD investigations is unworkable and inexcusable.

6. Despite the continued controversy in Memphis regarding police misconduct, the district attorney general's office does not keep records on the investigations of police misconduct in a manner that makes them retrievable on any basis other than by the names of persons involved.

Community Organizations and Leaders

The Tennessee Advisory Committee finds that the efforts of various community organizations and individual community leaders have been unsuccessful in improving police-community relations in Memphis. Concerned citizens of Memphis have failed to exert enough pressure on local officials to force them to put an end to police misconduct. The affluent white community lacks either awareness of or concern about problems between police and black citizens. Their lack of involvement allows local officials to maintain the status quo. In general, community organizations whose membership is not directly affected by police misconduct are not concerned about poor police-community relations in their city. As with both the mayor and city council, those who deny that a critical problem does exist in Memphis are simply denying the long list of studies, the various investigations, the involvement of Federal agencies, and their local newspapers and news broadcasts.

Civil Rights Organizations

1. The Tennessee Advisory Committee finds that the work of several civil rights organizations reviewed in the course of this study has been beneficial to the community at large and especially to the black community. The Memphis branch of the National Association for the Advancement of Colored People, the Memphis Urban League, and the American Civil Liberties Union of Tennessee have all made outstanding contributions to Memphis through their efforts to improve police-community relations. Whether through support for the victims of police abuse, studies of their own, legal assistance to individuals, or suits against the police department as a whole, each organization has worked for the betterment of Memphis.

2. Despite their efforts, the Advisory Committee finds that civil rights organizations have been unsuccessful in improving police-community relations in Memphis. Some successful litigation has, of course, forced change in some police procedures or has brought relief to individual victims of police brutality. However, the refusal of city and police officials to investigate adequately citizen complaints and to discipline officers has not been effected.

3. The Advisory Committee finds that the efforts of the civil rights organizations named, and others in Memphis as well, in the past have not been united. Community representatives who participated in the 1974 U.S. Department of Justice, Community Relations Service, study and negotiations did present a united front by continuing to meet with city and Federal officials for such an extended period of time. However, consensus among community representatives could not be reached when they were called on to sign an agreement that dealt with some of the issues discussed during the negotiations.

4. The Advisory Committee finds that the local civil rights organizations that have worked for many years to improve police-community relations have failed to translate their displeasure with public officials into political action, e.g., action at the ballot box. Many of the local officials who have continued to refuse to take action to improve the police department have held public office for a number of years. Other elected officials, including both blacks and whites, have expressed sympathy with the civil rights groups but have also failed to act.

5. The Advisory Committee finds that the leaders of the civil rights groups named have made and continue to make an honest effort to communicate with Mayor Chandler and Police Director Chapman. The civil rights groups and their spokespersons continue to seek peaceful, constructive routes to abate police brutality in Memphis, and they are to be commended for providing such leadership to the community.

The Business Community

1. The Tennessee Advisory Committee finds that the Memphis Area Chamber of Commerce, which is regarded as the formal spokesgroup for the business community, does not officially acknowledge that critical problems in police-community relations do exist. Although the chamber's recent financial woes, which led to drastic staff cutbacks and massive reorganization, have been attributed in part to its involvement in "social problems" rather than "business problems," the Advisory Committee finds that the chamber is not and has not been directly involved in any work to alleviate police-community problems in Memphis.

2. The Advisory Committee finds that although some businesspersons who are chamber board members acknowledge that police misconduct is a critical problem in Memphis, as individuals they are not involved in finding solutions to those problems.

3. The Advisory Committee finds that the business community of Memphis fails to acknowledge the direct, adverse relationship between poor police-community relations, poor race relations, and high unemployment among blacks and the economic life of the city. Some businesspeople do acknowledge that critical relationship. However, they, too, are not involved in finding solutions to the social problems and thus the economic problems that confront Memphis.

The Religious Community

1. The Tennessee Advisory Committee finds that religious leaders of all faiths acknowledge that police-community relations in Memphis are not good. However, with few exceptions, those leaders are not taking action to improve those relations.

2. In years past (1972, 1973, and 1974) various groups within the religious community conducted studies, reviewed other studies, or simply met and talked about police-community relations. Those efforts were unsuccessful in bringing any improvement in police-community relations.

3. Currently the work of the National Conference of Christians and Jews is the only viable effort on the part of a religious organization in Memphis to explore and help resolve tensions between the police and the community.

4. The Advisory Committee finds that the Memphis Ministers Association, a biracial ecumenical association, has not exercised leadership in the religious community where police-community relations are concerned. Active involvement by this organization would be a positive force in improving police-community relations.

Federal Involvement and Responsibilities

Federal involvement and responsibilities with regard to police-community relations in Memphis vary according to the statutory mandates of the agencies involved. Whether prosecuting criminal police misconduct, guaranteeing equal employment rights, or ensuring that Federal funds are not used in a discriminatory manner, all Federal agencies have an affirmative obligation to further the civil rights of individuals as set forth by the Constitution and relevant Federal authority.

The Advisory Committee has focused upon the activities of the Federal Government that affect police-community relations in Memphis. The broad conclusion of the Advisory Committee is that an active exercise of Federal civil rights responsibilities in Memphis is urgently needed to ensure that constitutionally guaranteed rights and Federal civil rights laws are not being subverted. Particular findings and conclusions with regard to various Federal governmental entities are presented below.

Office of the U.S. Attorney

1. The U.S. Attorney has the responsibility for prosecution of police misconduct that constitutes violations of Federal law, included among the myriad other Federal legal responsibilities that come with the position.

2. Prosecution of police misconduct that constitutes criminal violations of constitutionally guaranteed rights, although a limited remedy in combating pervasive police misconduct, is nonetheless a necessary one. First, prosecution of criminal police misconduct illustrates the fundamental precept that no one, including police officers, is above the law. Second, the absence of local sanctions against police misconduct in Memphis reinforces the need for Federal action to fill the void in public accountability.

3. Until the appointment of Walter James Cody, III, to the Office of the U.S. Attorney for the Western District of Tennessee, there had been virtually no Federal action taken in Memphis to enforce the Federal law that proscribes abuse of constitutional rights (including physical abuse) by local law enforcement officials. Federal inaction was aggravated by the parallel lack of local prosecution, a combination that effectively precluded criminal accountability for criminal police misconduct.

4. Recently, however, Mr. Cody has demonstrated effective results to complement his public pronouncements that all instances of police misconduct constituting probable violations of Federal law will be prosecuted. Presentments have been made to the grand jury and indictments have followed against Memphis police officers accused of violating persons' constitutional rights. The Tennessee Advisory Committee finds these developments both encouraging and regrettable at the same time; encouraging because the necessary Federal action represents the single most concerted effort in Memphis toward combating police misconduct; regrettable because this limited remedy is necessitated largely by the failure of the community and responsible local officials to exercise their responsibilities to prevent and combat police misconduct through more effective and desirable local action.

U.S. Department of Justice, Civil Rights Division

General

The Attorney General, through the U.S. Department of Justice, Civil Rights Division (CRD), is responsible for enforcing Federal civil rights laws and coordinating civil rights compliance efforts in the administration of federally-assisted programs. The CRD is divided into sections corresponding to the major areas of its responsibilities. The responsibilities administered by three CRD sections have the potential for significant impact upon police-community relations nationwide and are relevant to the issue of police-community relations in Memphis.

Federal Programs Section

1. The Attorney General has the sole responsibility to coordinate the efforts of all Federal funding agencies that must comply with the dictates of Title VI of the Civil Rights Act of 1964, as amended. This authority is currently exercised by the Federal Programs Section (FPS) of the Department's Civil Rights Division. Title VI prohibits discrimination against any person on the basis of race, color, religion, or national origin under any program or activity receiving Federal financial assistance.

2. The U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA), and the U.S. Department of the Treasury, Office of Revenue Sharing (ORS), provide millions of dollars each year to the city of Memphis and the Memphis Police Department that are used in MPD programs and activities. Both Federal agencies are subject to Title VI mandates and each has similar civil rights mandates specifically provided for in their respective enabling statutes. The Department of Justice, through its Federal Programs Section, has the responsibility to coordinate all civil rights compliance responsibilities similar to Title VI.

3. Despite the broad antidiscriminatory language of Title VI, and the enabling statues of LEAA and ORS, implementation of Title VI (as coordinated by the Department of Justice) has been restricted largely to employment discrimination issues and never to the issue of discrimination in the administration of justice.

4. Racially discriminatory application and administration of the laws and police authority by public officials, whether it be in the use of force, arrest, detention, or other police powers, is no less a violation of the Constitution and relevant Federal law than is overt employment discrimination.

5. With regard to Federal funding agencies' civil rights responsibilities under Title VI and other applicable authority, there is no evidence that any Federal agency has interpreted its responsibilities as encompassing sanctions against a recipient agency that discriminates in the administration of justice. Nor does the legislative history of Title VI offer any insight into whether Congress intended to have acts of police abuse fall within the scope of discrimination that would be a basis for revocation of funds under the act.

6. Despite this, however, a plain reading of Title VI, together with the necessarily broad interpretation afforded civil rights acts, compels the finding that discrimination in the administration of justice under any program or activity receiving Federal financial assistance is prohibited.

7. The Attorney General has the authority and the responsibility to prescribe standards and procedures regarding implementation of Title VI, including effective methods to combat discrimination in the administration of justice by recipients of Federal funds.

8. In addition to Federal authority and responsibility under Title VI and other relevant authority, there is a compelling need for Federal action to ensure nondiscrimination in the administration of justice by local law enforcement agencies. This is particularly true in Memphis where there has proved to be virtually no viable comprehensive mechanisms, either local, State, or Federal, for abating discriminatory police practices.

9. The Assistant Attorney General, Civil Rights Division, Drew S. Days, III, has publicly indicated the potential need to revoke Federal funds provided to local governments that allow police abuse to continue unabated. If implemented, this process would likely proscribe police abuse of constitutional rights, regardless of possible racially disparate application. The Tennessee Advisory Committee endorses this concept. Unwarranted police actions, whether discriminatory in application or not, should not be allowed to continue unabated by recipients of Federal funds. This effort, however, should not further delay the responsibilities of the Federal government with regard to

implementing existing authority which prohibits discrimination in the administration of justice.

Employment Section

1. Under the provisions of Title VII of the Civil Rights Act of 1964, as amended, and other relevant authority, the Attorney General has the authority to litigate against State and local governments that discriminate in employment on the basis of race, color, religion, sex, or national origin. This authority is currently exercised by the Employment Section of the Department's Civil Rights Division.

2. Litigation that serves to eradicate discriminatory municipal employment practices, in addition to ensuring equal employment rights, has a profound effect upon police-community relations as well. A police force made up of qualified individuals who reflect the composition of the community they serve is sensitive to diverse problems and accepted by all portions of the population.

3. In November 1974, subsequent to a suit filed for the United States by the Department of Justice, CRD Employment Section, alleging a pattern and practice of race and sex discrimination in hiring and promotions by the city of Memphis, the Employment Section and city officials mutually agreed to a "consent decree" setting forth procedures to achieve ultimately, throughout city employment, proportions of blacks and women approximating their respective proportions in the civilian labor force.

4. The interim goals of filling vacancies in entry positions with at least 50 percent black applicants and filling vacancies in supervisory positions with at least 50 percent blacks and females were adopted for the majority of city divisions. With regard to the police department, however, interim goals of 7 percent increase in black employment and 4 to 5 percent increase in female employment (both percentages based upon percent of total uniformed personnel) were allowed as deviations from the specific numerical goals required for most city divisions. With regard to promotions of blacks and women, no specific goals of any kind were established for the police department; rather, the city committed itself to making "significant progress."

5. Relaxing the interim hiring goals of the police department have, not unexpectedly, resulted in minimal black and female hiring gains. After nearly half of the 5-year period (November 24, 1974 to April 29, 1977) for "substantial" compliance with the long-term goal proportional labor force representation has passed, blacks and women represent only 15 percent and 4 percent, respectively, of the uniformed personnel. Regarding promotions, by any definition, the city has failed utterly to make "significant progress" in promoting blacks and women. During that same period, under the nebulous commitment to black and female promotions, the department had promoted a total of five blacks and no women.

6. Without significant changes in the current process of hiring and promotion of blacks and women in the Memphis Police Department, it is a virtual certainty that, despite the city's paper commitment to proportional representation of blacks and women at all levels within the department, the city will substantially fall short of, rather than substantially comply with, the long-term goals of the consent decree affecting the Memphis Police Department.

Criminal Section

1. The Attorney General has the authority to prosecute police misconduct that falls within the statutory prohibition of denial of constitutional rights under the authority of law. This responsibility is currently exercised by the Civil Rights Division's Criminal Section either independent of, or in concert with, the local U.S. Attorney.

2. The scope of the Federal criminal remedy to prosecute criminal police misconduct has historically been severely limited due to restricted judicial interpretation of the law and the former policy of the Department of Justice to defer prosecution of police misconduct to local authorities. The resulting miniscule number of Federal actions nationwide has been dramatically underscored by the virtual void of Federal prosecutions of police misconduct in Memphis.

3. Recent developments, however, indicate that after decades of inaction, the Department of Justice is recognizing the need to exercise its jurisdiction over criminal police misconduct. This change, long overdue, has recently begun to be felt in Memphis; a step sorely needed in the journey toward ending pervasive police abuse of Memphis citizens.

4. Attorney General Griffin Bell has publicly stated the Department's position that police

misconduct that constitutes probable violations of Federal law will no longer be ignored in deference to local authorities. Drew S. Days, III, in charge of the Department's Civil Rights Division, has visited Memphis, at the request of U.S. Attorney Cody, to discuss the problems of police misconduct with Memphis residents. The resulting cooperation of the CRD, Criminal Section, with U.S. Attorney Cody in bringing about indictments against two Memphis police officers for criminal police misconduct illustrates both the existence of the problem and the justification for the Federal action.

5. The need for continued Federal action to ensure that criminal police misconduct in Memphis will meet with swift and just punishment is clear. Past and present practices of local officials have proved to be utterly worthless in combating police misconduct. The lead in prosecuting police officers who commit criminal offenses against Memphis residents must presently stem, necessarily and regrettably, from Federal officials.

Office of Revenue Sharing and the Law Enforcement Assistance Administration

1. The U.S. Department of the Treasury, Office of Revenue Sharing (ORS) and the U.S. Department of Justice, Law Enforcement Assistance Administration (LEAA) are the two principal sources of Federal funding to the city of Memphis and the Memphis Police Department (MPD). Revenue sharing funds are given directly to the city with a substantial portion of the funds designated for use by the MPD. LEAA funds are granted directly to the department and to the city, as well as to other local entities.

2. Both ORS and LEAA have the primary responsibility to ensure that recipients of Federal funds do not discriminate in their programs or activities as provided by Title VI of the Civil Rights Act of 1964, as amended, and similar nondiscrimination language in the agencies' respective enabling statutes. Failure by the city or the MPD to comply with the civil rights assurances provided by law and regulation mandates revocation of Federal funds.

3. Despite the fact that the city of Memphis and the Memphis Police Department receive the largest single amounts of ORS and LEAA funding of any city and department in Tennessee, neither Federal agency has ever conducted compliance activities to ensure that Federal civil rights laws, and appropriate regulations are not being violated by the city or the department.

4. The U.S. Department of Justice, Civil Rights Division, initiated investigations of municipal employment discrimination in Memphis in 1974; the investigations culminated in the consent decree of *U.S. v. Memphis*. This fact might explain, to some extent, the absence of civil rights compliance activity by ORS and LEAA, i.e., to avoid duplication of Federal efforts. Employment discrimination, however, is not the only type of discriminatory activity prohibited by the relevant laws and regulations. In addition to discrimination in the administration of justice, which neither agency has considered to be within its oversight responsibilities, there are other areas such as discriminatory allocation of services that are acknowledged as part of the agencies' compliance responsibilities.

5. The absence of compliance activities by LEAA and ORS in Memphis is cause for surprise and regret. Effective civil rights compliance activities, an affirmative responsibility of all Federal funding agencies, if properly exercised, can provide a comprehensive administrative control over potential civil rights violations by recipients that is largely unobtainable through civil and criminal litigation. Unfortunately, this benefit, due to inaction by ORS and LEAA, has gone unrealized in Memphis.

U.S. Commission on Civil Rights

1. The U.S. Commission on Civil Rights is an independent, bipartisan, executive agency. Charged with investigating and factfinding with regard to a broad range of civil rights matters, the Commission since its inception in 1957 has served the President and Congress in providing information and recommendations to further the constitutional rights of persons in the United States.

2. The Tennessee Advisory Committee commends the Commission for its involvement in the Advisory Committee's study of police-community relations in Memphis. Responding affirmatively to the pleas of Advisory Committee members and Memphis residents, the Commissioners held a hearing in Memphis to gather information and hear testimony that the Advisory Committee was

unable to garner, due largely to the refusal of city officials to cooperate with earlier Advisory Committee efforts. Without the laudable actions of the Commission, this study would not have been possible.

3 As forcefully presented by the situation in Memphis, the Advisory Committee finds that both the scope and implementation of Federal responsibilities with regard to denial of rights in the administration of justice by law enforcement personnel and responsible officials needs to be reappraised. An examination of the existing Federal responsibilities in this regard in Memphis dictates that, despite the basic constitutional rights and the level of Federal funding involved, there is precious little in the way of Federal remedies to combat systemic denial of rights, regardless of racial impact, in the administration of justice by local law enforcement agencies.

4. The U.S. Commission on Civil Rights has the unique authority to study developments constituting denials of rights in the administration of justice and to appraise the laws and policies of the Federal Government in this regard. A comprehensive national study with appropriate findings and recommendations to the President and Congress is urgently needed to ensure that appropriate Federal mechanisms and procedures are available to prevent, as well as combat, systemic denials of constitutional rights by law enforcement authorities in the administration of justice.

Chapter 10

RECOMMENDATIONS

The Tennessee Advisory Committee to the U.S. Commission on Civil Rights offers the following recommendations for improvement in police-community relations in Memphis to the Memphis community at large and to those individuals and organizations within the community that have the authority and capability to directly act on them. Additionally, recommendations are directed to the U.S. Commission on Civil Rights with regard to Federal involvement and responsibilities related to police-community relations throughout the country.

Community Action

As emphasized throughout this report, the improvement of police-community relations is the responsibility of, and is beneficial to, the entire community. **Accordingly, any attempt at recommendations by the Tennessee Advisory Committee must begin and end with a recommendation of community action as the basis for making improvements in Memphis.** Community action is required to support the actions, from all segments of the community, that are necessary to resolve the problems that exist.

While several specific recommendations are necessarily directed at those individuals and organizations with the authority and capability to initiate actions and to maintain specific improvements, in effect, all recommendations are directed to the entire community for action. Few of the recommendations are mutually exclusive. In many instances, despite the efforts of one individual or organization, without complementary efforts from others, the results will be limited or futile.

The coordinated and comprehensive actions required from those who are in positions to initiate them, must therefore, be encouraged, supported, and mandated by the entire community.

Police-Community Relations Committee

The Tennessee Advisory Committee recommends to the mayor of Memphis that he, with input and cooperation from the entire community, initiate the establishment of a formal and permanent committee for the purpose of improving police-community relations. The members of the committee should reflect a cross section of the Memphis community, its organizations, and the interest of its people.

Two fundamental concepts regarding the committee must be accepted by the mayor and the community in order for the committee to be effective:

1. The committee must be clearly autonomous—defined and operated as a committee representing and acting on behalf of the entire community.
2. A clear delineation of the functions of the committee and the structure necessary to perform them must be formally adopted by the committee.

While the initiative for the committee's creation must come from the mayor in order to demonstrate official commitment to its effectiveness, the committee should not, in either appearance or operation be subject to the control of the city government. To be effective, committee members, including representatives of the community and the city government, must gather as equals to perform the functions defined and controlled by the committee itself.

The Tennessee Advisory Committee offers the following guidelines regarding the membership, functions, and structure of the committee. The recommended guidelines can and should be expanded or revised by the committee as appropriate, and as experience and knowledge gained through subsequent operations of the committee require.

Committee Composition

For the committee to be autonomous and representative of the entire community, both in appearance and fact, specific procedures need to be followed. The Advisory Committee recommends:

1. The mayor, after communication with and approval of the respective organizations, should announce that the nucleus for the committee shall consist of those Memphis organizations represented on the 1974 Community Negotiating Team organized by the U.S. Department of Justice, Community Relations Service and city officials. Those organizations are: American Civil Liberties Union, Chamber of Commerce, Community Relations Commission, Junior League, League of Women Voters, National Association for the Advancement of Colored People, National Conference of Christians and Jews, People United to Save Humanity, and the Urban League.

2. Additionally, the mayor should announce that nominations for additional membership on the committee, from both the nucleus membership and the community at large, should be forwarded to his office. The nucleus members, at the initial meeting of the committee, should vote on the nominations received with the stated purpose of arriving at a committee membership as representative as possible of the community.

3. A broad representation of both public, and private organizations and officials should be included. Particular efforts to include lower-income blacks and whites should be made.

4. Without any intention at limitation, the Advisory Committee believes the following public and private entities should be represented on the committee:

City Government: Office of the mayor; Office of the Director of Police, Office of City Public Defender, Office of City Prosecutor, City Council.

County and State Government: Office of Memphis and Shelby County Public Defender, Office of District Attorney General.

Police Associations: Afro-American Police Association, Memphis Police Association.

Bar Association: National Bar Association, Memphis and Shelby County Bar Association.

Memphis and Shelby County Legal Services Association.

5. The extent to which certain entities can or should participate in all functions of the committee may be limited by potential conflicts with official duties, especially with regard to governmental representatives. To provide the necessary broad base for communication and coordination, however, the Advisory Committee believes that the cooperative involvement of all these entities is essential. Subcommittees and special task forces may be created by the full committee to carry out committee functions without conflicts of interest among certain members.

Committee Functions

1. Coordination of Community Action: The first function of the committee should be to provide a forum for discussion and coordination of the various community actions required to improve police-community relations. For example, the expertise of each entity, public and private, represented on the committee would be discussed by the full committee to determine what kinds of actions can and should be undertaken, the extent to which other entities can be of assistance, and the role of the full committee in furthering the actions taken.

2. Forum for Communication: A fundamental function of the committee should be to provide open and direct channels of communication for both the community and the Memphis Police Department on matters of mutual interest. Hostilities and misunderstandings aggravated by lack of communication between the black community and the MPD could be largely avoided if representatives of both sides, using the committee, discuss the matters of concern in a calm and deliberative fashion. The committee should make the department aware of the feelings of the citizenry and, in turn, the department should display its concerns and explain its position to the community through the committee. This process will inevitably provide each member with an informed opinion and a broader perspective with regard to each segment of the community.

3. Involvement in Law Enforcement Policy: The Memphis Police Department, through its representation, should use the committee as a community forum for review of existing and proposed basic law enforcement policies. Such critical areas as the use of force, both deadly and nondeadly; internal investigation and discipline; training; police field practices, such as arrest, search and seizure, and detention should be discussed by the committee, and revised as appropriate. Review of existing and proposed (by either the MPD or the committee) law enforcement policy with the full cooperation of the MPD should be mandatory. At least initially, however, the MPD should be free to accept or reject the advise of the committee provided that the reasons for rejection are clearly stated. In addition to promoting better understanding between the police and the community, this function has the advantage of involving the community in the decisionmaking process, thereby providing a basis for community acceptance and support of legitimate law enforcement policies.

4. Advisory: The committee should advise not only the MPD and city government, but other public and private entities as well. Advice of the committee should be formally adopted, with minority opinions noted and presented to the appropriate entity with requests for what actions will be taken in response to the advice. More often than not, the entity that is the object of the advice will be represented on the committee. In such cases, the concerns and possible objections to the committee's potential action will have been stated, allowing for more informed and constructive final action by the committee. In turn, the entity to whom advice has been given should be more inclined to respond positively.

5. Solicitation, Referral, and Monitoring of Citizen Complaints: The Tennessee Advisory Committee is confident that *if* the MPD, with input and support from the committee, makes the changes necessary to have an open, fair, and effective internal affairs process, community confidence in the department's ability to police itself will eventually be realized. The Advisory Committee is reluctant to recommend an official form of civilian review that, no matter how structured, cannot be as effective as properly applied internal affairs procedures. Nonetheless, should the internal affairs procedures remain as they currently exist, resort to an official form of civilian review (i.e., review and disposition of complaints by an authority outside of the MPD) will be essential.

Assuming that the MPD will begin to demonstrate the capability to police itself, however, monitoring the department's dispositon of civilian complaints, if not official civilian review, is still required. Unilateral actions of the MPD, no matter how well conceived and implemented, will remain inherently suspect in the minds of a substantial portion of the community until the MPD has proved its ability to police itself.

The Advisory Committee recommends, therefore, that in the interim the committee perform the following functions with regard to community oversight of the MPD internal affiars process. It is emphasized that the committee's role will be one of assistance and monitoring only, with all actual investigations and disciplinary actions to be conducted and taken solely by the MPD.

Solicitation and Referral of Complaints: With the cooperation of the MPD, the committee should publicly encourage any citizen who feels that he or she has been mistreated by the police to file a complaint either directly with the Internal Affairs Bureau or, if the complainant prefers, anonymously through the committee itself. In addition, those community organizations that have referred complaints in the past on behalf of citizens, should coordinate them with the committee. The object of this procedure is to encourage rather than discourage the filing of citizen complaints.

A complaint form developed by the IAB and approved by the full committee should be distributed by committee members within the community.

The procedure for solicitation of complaints should be complementary to, and not in lieu of, the changes needed to be made in the MPD internal affairs process.

Monitoring of Internal Affairs Process: All complaints received by the IAB, either directly or by referral from the committee, should be recorded by date received and the type of police misconduct alleged. Monthly reports of the number and type of complaints should be publicized by the MPD through the committee.

A task force of the committee exclusive of members representing the MPD, should monitor the MPD dispositon of the complaints received, from investigations by the IAB through disciplinary actions taken by the department. The scope of this monitoring should include onsite review of IAB investigation procedures, review of IAB determinations as to the merits of complaints, and review of disciplinary actions with interviews to determine why action was or was not taken.

In addition to notifying each complainant in writing of the disposition of his or her complaint, the IAB, with oversight from the task force, should compile monthly summaries of its investigative findings and the disciplinary actions taken in response to the investigations, including explanations of investigated complaints resulting in no disciplinary action.

The committee should report its activities, findings, and recommendations with regard to MPD internal affairs procedures through formal methods of communication, including periodic press releases and printed reports.

Committee Structure

1. Committee Charter: The functions and structure of the committee should be set forth in a written charter to provide a clear understanding of what the committee is to do and how it is to do it.

2. Publicly Announced, Open, and Regular Meetings: The committee should meet at regular intervals, subsequent to advance public notice, and be open to the public to the extent consistent with effective and orderly operations. One designated meeting place, if available, should be used to enhance public awareness of committee operations.

3. Operational Support: Effective coordination and implementation of committee activities will require a degree of operational support. The majority of committee efforts should be coordinated by assistance gained from committee members and support staff of certain organizations represented on the committee for the committee to remain as autonomous as possible. As necessary and appropriate, however, the mayor should provide additional support, as requested by the committee. Subsequent to committee organization, the members may wish to make provisions for full-time support staff and office space to facilitate effective and continuous committee operations.

4. Commitment to Necessary and Reasonable Change: The ultimate success of the committee, of course, will depend upon the extent to which its members can arrive at reasonable solutions to real points of disagreement. Unreasonable demands, on the one hand, and recalcitrance to positive change, on the other, will surely and in short order doom the entire efforts of the committee. In order to unravel the complex problems adversely affecting police-community relations, all members of the committee must agree to work with, not against, each other. The committee must be structured around the commitment of all concerned that necessary and reasonable changes will be made to improve police-community relations.

Comprehensive Survey of the Memphis Police Department

The Tennessee Advisory Committee recommends that the Director of Police, with the support of the Mayor and City Council arrange for a comprehensive survey of the organization, management, personnel structure, and operations of the Memphis Police Department. The survey should be conducted by an organization universally recognized as professionally competent to review existing programs and policies and recommend necessary and appropriate changes.

The Tennessee Advisory Committee believes that several specific changes in MPD programs and policies need to be made immediately. The Advisory Committee recognizes, however, both the desirability and the need for a comprehensive survey of the MPD. First, an independent, professional survey of the MPD by an organization that has the full cooperation and acceptance of responsible MPD and city officials will facilitate adoption of necessary improvements. Second, such a survey can display an integrated analysis of the entire MPD operation, including those matters not specifically covered in this report, providing a complete basis on which to build comprehensive and coordinated improvements.

The Advisory Committee does not recommend any specific organization to conduct this survey. Certainly, an organization such as the Internal Association of Chiefs of Police deserves consideration. Institutions of higher learning that have provided consultant services to other police agencies should also be considered.

The MPD, through the Police-Community Relations Committee, should coordinate such a survey with the community, soliciting its assistance in identifying specific matters that warrant special analysis and the names of organizations that might conduct the study; maximize publicity of the survey and its results; share with the community the MPD's response to the survey; and solicit advice and comment on the survey's recommendations.

The Advisory Committee recommends that the survey specifically include attention to MPD programs and policies that have the greatest impact on police-community relations. The comprehensive survey of the MPD, however, should not delay certain specific actions that must be taken immediately in order to improve police-community relations (including those recommendations of the Advisory Committee). All recommendations of the Advisory Committee, and the actions taken in response to them, should, of course, be scrutinized in the survey.

Memphis Police Department Policy and Procedures

The following recommendations are directed specifically to the director of police services, with such input and support from other city officials and community members required to implement them.

Internal Affairs Process

1. **Investigation:** All complaints of police misconduct should be accepted and investigated by the MPD: (a) whether reported in person, in writing, or by telephone; (b) whether made anonymously, sworn to, or in any other form; and (c) whether from the alleged victim, an eyewitness, a person who has merely heard of the incident, or an organization referring complaints on behalf of others.

Investigations of complaints should never be discontinued solely because the complainant wishes to drop the complaint.

The identity of known complainants, unless volunteered, should not be made available to the accused officer during the course of the investigation in order to avoid both the appearance and the liklihood of possible retaliation against the complainant.

Individual complainants, the person(s) or organization(s) filing the complaint with the MPD should be notified of the disposition of the complaint and the basis for it.

According to established procedures (as discussed in this report) and limited to situations where its use as an investigative tool is necessary to ascertain the merits of a complaint, accused police officers should be required, under penalty of dismissal for refusal, to take a polygraph examination.

The MPD should provide periodic public reports on: (1) the number of complaints of police misconduct received by the department; (2) the kinds, with corresponding numbers, of police misconduct alleged by the complainants; (3) the number of investigations made in response to the complaints; (4) the disciplinary actions taken, corresponding to the kinds of misconduct investigated, by the department resulting from the investigations. The periodic reports should reflect summaries only containing neither the identies of the complainants and accused officers, nor the details of investigations.

The two provisions of the Memphis Police Association is bargaining agreement with the city of Memphis that currently inhibit the implementation of the above recommendations should either be voluntarily revised in cooperation with the MPA or, if necessary, declared void by the Mayor as in violation of the public interest.

Discipline: Beyond an open and effective process of investigation, the MPD must begin to demonstrate, openly and effectively, that it will take disciplinary actions in response to substantiated complaints. The recommendations listed below are consistent with those set forth by the President's Commission on Law Enforcement and Administration of Justice (*Task Force Report: The Police*) and are designed to obtain results that are fair, in appearance and in fact, to all parties concerned.

Formal written disciplinary policies should be established that clearly dictate that substantiated incidents of abuse of authority (as specifically defined by MPD regulation) such as physical or verbal abuse, harassment, retaliation against a complainant, and discriminatory treatment will be met with disciplinary actions consistent with the seriousness of the offense.

All Internal Affairs Bureau (IAB) investigations of serious allegations of abuse of authority (including the examples listed above) except those that clearly disclose no evidence at all of misconduct, should automatically be subject to review and disposition by a departmental disciplinary trial board. Minor complaints substantiated by IAB investigation should be resolved through the accused officer's immediate supervisor.

The trial board should be established for the dual purpose of (1) determining whether results of the IAB investigations require disciplinary action; and (2) if required, recommending the kind of disciplinary action to be taken.

Trial board members should be carefully screened for impartiality and lack of prejudice and appointed by the director of police services.

Established procedures for disposition of each investigated complaint before the trial board should include the following:

- The trial board hearing should be open to the public.
- If known, the complainant, at his/her discretion, should be allowed to be present.
- Both the officer and the complainant should have subpena powers, be represented by counsel if desired, and be able to see the investigation report if desired.
- Should the individual complainant be unavailable or choose not to participate, the complainant's position should be pursued by a representative of the IAB competent to do so.
- There should be an opportunity for cross-examination by both the officer and complainant (or IAB representative).
- If desired by either party, a transcript of the proceeding should be made.
- The trial board should make written opinions on each case including findings of all important facts and an explanation of its reasoning.
- When required, the trial board should recommend a specific form of discipline based on its findings of fact.
- The director of police services should have the sole authority to act on the disciplinary recommendation of the trial board.
- The recommendations of the trial board should be accepted by the director of police services unless the director, for good cause shown, determines that the recommended action should be either increased or decreased.

Restricted and Specifically Defined Use of Deadly Force

The Advisory Committee recommends that the Memphis Police Department establish firearms policies that clearly limit the use of deadly force to situations of strong and compelling need. The use of firearms should be permitted only where there is substantial risk that failure to use deadly force will cause death or serious bodily harm to the officer or the public. Specifically, the Advisory Committee recommends that the MPD adopt as its firearms policy, and strictly enforce, the six definitive guidelines endorsed by the President's Commission on Law Enforcement and Administration of Justice. The six guidelines are reprinted in their entirety in chapter seven of this report.

Police-Community Relations Training and Structure

1. The Advisory Committee recommends that immediate steps be taken to establish comprehensive, mandatory, and continuous police-community relations training for all levels of departmental personnel.

To be effective, a carefully designed and implemented training program to ensure that all police officers have both the will and the ability to become active forces for improvement in police-community relations is essential. Accordingly, the Advisory Committee recommends that the comprehensive review of the MPD (as previously recommended) specifically include a component to create such a program within the department. This effort should be reinforced by additional expertise, as appropriate.

2. The Advisory Committee recommends that a community relations unit be established within the PMD that will be responsible for the coordination and administration of the entire department's community relations effort.

The unit should be understood by all as a device to further the entire department's efforts and not as the sole entity responsible for good police-community relations.

The unit should be established as an integral part of the department's operation, given high visibility and authority, and commanded by an officer of sufficient rank who reports directly to the director of police services.

City Council

The Advisory Committee recommends that the Memphis City Council provide active legislative oversight of Memphis Police Department policies

and practices and fully exercise council responsibilities that relate to the police.

1. While local law and sound administrative practice dictate that the council cannot and should not be involved in the detailed administration of the MPD, as elected representatives of the people, it is recommended that members investigate and inquire into police policies and practice to determine if they are beneficial and in the public interest. Specifically, the Advisory Committee recommends that the council publicly review the existing and future bargaining agreements between the Memphis Police Association and Memphis to ensure that all provisions are consistent with sound public policy.

2. The Advisory Committee recommends that the city council establish formal lines of communication with the MPD so that matters of concern to the community can be publicly articulated and informed decisions can be made by the council in cooperation with the MPD.

3. It is recommended that the council actively review all nominees of the mayor to positions of authority affecting the operations of the MPD. The qualifications and philosophies of candidates for the directorship of police services and the civil service commission should be publicly reviewed by the council to provide a clear indication to the candidates' potential performance in office.

Office of District Attorney General

The Advisory Committee recommends to the district attorney general that he establish a permanent, special investigative unit to initiate and conduct independent investigations of probable criminal police misconduct by Memphis police personnel. The Advisory Committee also recommends that he take such further actions (including those set forth in this report) as required to demonstrate, both in appearance and in fact, that criminal violations of the law will be prosecuted as vigorously against police officers as against private citizens.

Bar Associations

The Advisory Committee recommends to the presidents of the Memphis and Shelby County Bar Association and the Memphis chapter of the National Bar Association that they initiate efforts within their respective organizations toward improving police-community relations in Memphis.

The Advisory Committee recommends that activities undertaken by both bar associations be coordinated with the proposed police-community relations committee to enhance their effectiveness as well as to promote community awareness. Organizational questions as to which association can best undertake a particular project or the desirability of joint ventures can be resolved in this manner.

In a manner to be determined by the respective associations, the Advisory Committee recommends that the following specific projects be conducted:

1. Publication Describing Rights and Responsibilities of Police and Citizens: A document that, in layperson's terms, describes the rights and responsibilities of both the police officer and the citizen in typical situations where they come into contact should be prepared and distributed to the community. For example, an overview of police and citizen rights and responsibilities in situations of arrest, stop and frisk, field interrogation, and detention should be included.

2. Study of Civil Service Disciplinary Appeal Process: The general purpose of this study should be to determine (a) what is the intended purpose (through review of relevant authority in the city charter and code of ordinances) of the current civil service commission disciplinary appeal process and in what manner the commission is intended to operate to fulfill that purpose; (b) how does the intended purpose and operation of the civil service commission compare with actual results; (c) what changes and improvements, if any, in the function and operation of the civil service commission are needed to achieve the intended purpose; and (d) what, if any, alternative methods of civil service disciplinary review are potentially available that would be an improvement over the intended purpose of the current civil service commission disciplinary appeal process.

Specifically, the study should include recommended rules of evidence and procedure for whatever form of disciplinary review is deemed appropriate.

The results of the study should be formally presented to the mayor and the city council for their consideration and appropriate action.

U.S. Commission on Civil Rights

Commission Study

The Advisory Committee recommends that the U.S. Commission on Civil Rights: appraise the laws and policies of the Federal Government with respect to equal protection of the laws in the administration of justice by local law enforcement agencies; make findings regarding the effectiveness of the current scope and implementation of the Federal laws and policies; and recommend to the President and Congress actions designed to provide appropriate methods for securing constitutionally guaranteed rights in the administration of justice by local law enforcement agencies.

Selected Areas of Study

The Advisory Committee recommends that the following areas be included in the Commission's appraisal:

1. Denial of Rights in the Administration of Justice and Federal Financial Assistance

The Advisory Committee recommends that the Commission analyze the need to provide, through specific legislation, that no Federal funds can be used or received by local law enforcement agencies or municipal governments that do not demonstrate adequate responses to abuses of police authority, regardless of racially disparate impact, by police personnel subject to their jurisdiction. It is recommended that the Commission monitor the current study of the U.S. Department of Justice, Civil Rights Division, in this regard and coordinate its efforts with that agency.

2. Federal Civil Remedies for Violations of Constitutional Rights by Law Enforcement Officials

An examination of the effectiveness of relevant Federal law providing civil remedies for abuse of constitutional rights by police personnel is recommended. Included in this examination should be an analysis of the obstacles that inhibit valid exercise of the Federal law, including: nonliability of municipal governments for violations of constitutional rights by police officers in the course of duty; access to, and willingness of, private attorneys to litigate this cause of action under the current law; and potential for Federal funding (e.g. through the Legal Services Corporation) to increase access to civil remedies, including injunctive relief, designed to correct abuse of police authority.

3. Federal Criminal Sanctions for Violations of Constitutional Rights by Law Enforcement Officials

An examination of the effectiveness of the current Federal criminal law in preventing and punishing abuse of rights by police should be examined. This examination should include:

- An analysis of the law itself to determine if the law is effective in affording necessary convictions;
- An analysis of the extent of Federal prosecution of probable violations of the law;
- An analysis of the policies of the U.S. Department of Justice and U.S. District Attorneys with regard to enforcement of the law.

4. Federal Assistance to Law Enforcement Agencies for Improvement in Police-Community Relations

An examination of existing and potential means of Federal assistance to local law enforcement is recommended. Included in this examination should be an analysis of programs for Federal assistance to local law enforcement agencies to establish and maintain improved police-community relations through such mechanisms as police-community relations training, police-community relations units, effective internal affairs processes, and citizen advisory committees.

U.S. Department of Justice Action

The Tennessee Advisory Committee recommends that the U.S. Commission on Civil Rights urge the U.S. Attorney General to take the following actions:

1. Implementation of Title VI Regarding Discrimination in the Administration of Justice by State and Local Law Enforcement Agencies

The U.S. Attorney General should exercise his authority under Executive Order No. 11764 to fully implement Title VI of the Civil Rights Act of 1964 with regard to prevention of discrimination in administration of justice by State and local law enforcement agencies.

2. Achievement of Minority and Female Employment Goals Within the Memphis Police Department

The U.S. Attorney General should take action to assure timely achievement of the ultimate minority and female employment goals set forth in the consent decree of *U.S. v. Memphis*, i.e., within the police department in proportions approximating their

117

proportions in the labor force. In addition, the U.S. Attorney General should seek the imposition of specific interim numerical hiring and promotion goals in order to achieve the required black and female representation.

118

Appendix A

List of documents subpenaed by the U.S. Commission on Civil Rights from E. Winslow Chapman, director of police services; John Holt, acting chief of police; Joseph Sabatini, personnel officer, city of Memphis and Henry R. Evans, chief administrative officer, city of Memphis.

1. Computer printout entitled, "Disciplinary action report number 77123".

2. Computer printout entitled, "Disciplinary action report number 77125".

3. Documents entitled, "Memphis Police Department rules and regulations May 1975".

4. The organizational chart of the Memphis Police Department.

5. Memphis Police Department general order number 12-76, internal discipline.

6. Internal Affairs Bureau charts for the years 1974, 1975, 1976, and the period from January 1, 1977, through April 29, 1977, displaying total complaints, types of complaints, total complaints investigated, disciplinary action taken, and types of disciplinary action taken.

7. Undated and untitled, Memphis Department disciplinary summary for 1975.

8. Memphis Police Department order G-73-11 entitled "Promotion procedures" dated April 4, 1973.

9. Miscellaneous data on recruiting, hiring, and promotion.

10. Computer printout entitled, "Complement report for Memphis Police Department for week ending 4/24/77".

11. City of Memphis charter, section five outlining the city's nondiscriminatory policy.

12. Mayor's executive order of 12/21/73 setting forth a nondiscriminatory policy.

13. Mayor's memorandum of 6/19/75 outlining administrative procedure for complaints of discrimination.

14. Nondiscrimination clause of the city's labor union contract.

15. The consent decree in the case of U.S. v. Memphis.

16. List of all promotions in the Memphis Police Department by race, sex and rank for the years 1974 through 1976 and 1977 to date.

17. Charter and related laws of the City of Memphis, Article 34, Sections 240 through 250.4.

18. Code ordinances of the City of Memphis, Volume 1, Chapter 12, pages 419 through 429.

19. Minutes of the City of Memphis Civil Service Commission hearing.

20. A copy of the annual budget for the police department of the City of Memphis by line item and source of funds for the last four fiscal years, 1974, 1975, 1976, 1977.

AFRO-AMERICAN POLICE ASSOCIATION, LTD.
POST OFFICE BOX 72 • MEMPHIS, TENNESSEE 38101

MOTTO:
"Save Ourselves from Ourselves"

OCTOBER 20, 1977

RECEIVED
OCT 21 1977

Mr. Bobby D. Coctor
Regional Director
Southern Regional Office
U. S. Commission on Civil Rights
75 Piedmont #326
Atlanta, GA. 30303

Dear Sir:

This letter is submitted to acknowledge receipt of your preliminary report and to clarify my position as mis-stated therein.

It should be noted that at the time of the interview, prior to it and still afterwards; my position and that of name association has been with the high incident of disciplinary action taken against blacks by the Police Dept.Severity of Punishment give in comparison to white officers for similar alledged infraction and the very high propersity of the Civil Service Board to uphold this Action against Blacks, when the opposite is true in cases concerning whites. As your data will show blacks make up approximately 11 per cent of the department and account for roughly forty per cent of it's discipilenary action. Even worse, the Police Dept. will lose more than fifty per cent of its cases involving white officers, before the Civil Service Board and win more than seventy-five per cent of similar cases involving blacks. The exception being when both a black and white officer are brought up on charges growing out of the same incident. Pass Police Dept. practices have shown in these instances disicipline will be slightly harsher for the white and somewhat less sever for the black. Both officers having bettwr than the fifty per cent chance that the Civil Service Board will overturn the departments action.

Of equal concern to me and the association is the refusal of the department to promote blacks or to utilize them in positions of responsibility. Thus, the filing of our class action suit against the Police Dept. in regards to these practices of discrimination based on race.

Finally, I am deeply concerned as to my alledged statement in regards to the IQ efficiency of black officers verses white. For the record, my statement on this matter is that prior to January, 1971, all blacks hired by this department were superior to their white counterparts in all aspects, education, pyhsical fitness, test scores, past work records and background investigation results. During these times, most blacks had two years or more of college at the time of employment in contrast to many white not having high school diplomas at the time of their employement. Needless to say, many of the latter are our present day commanders. However, beganing in January , 1971, a consent decree was entered into with the Justice Dept. and a two year college requirement was instituted for all new Police Recruits. The below signed was also made the recruiting officer. In keeping with the Justice Dept. Decree, that fifty per cent of all new recruits be minority the college requirement and background investigation was often waived for that all elusive male black. Because of this I stated that this could possibly count for the increase in alledged black officer brutality complaint by black citizens.

Further many of the newal black officers are not native Memphians as is the case of older officers with the dept..With these observations in mind, I stipulated that the superior statis of black officers employed by the 1971 over their white counterparts may have deteriorated since this date, due to the waiving of educational and background requirements for the black male officer. All I am saying is that with the dropping the double standards for employment brought about employment of blacks more equal to or on the level of the white officer and this could be the source of problems.

Hoping that this will clarify my position of what I consider to be very important issues stated in your report and I am sending this information to you so that it might be included in your final version of this report.

Thanking you in advance for your cooperation in this matter.

Sincerely,

E. B. Adair

MEMPHIS
POLICE
ASSOCIATION

RECEIVED
NOV 3 1977

November 1, 1977

Mr. Bobby D. Doctor
United States Commission on
Civil Rights
75 Piedmont Avenue, Room 362
Atlanta, GA 30303

Dear Mr. Doctor:

I have just completed reading the draft of the Tennessee Advisory Committee to the U.S. Commission on Civil Rights and have found the findings paint a picture of gross injustice to the minority sector. This committee made negative remarks toward 90% of all the people who testified before the committee. I certainly hope that the final report will include specific finds and true recommendations and will lean toward constructive criticism and positive remarks.

Your factual information, which composes about 5% of the entire draft was inaccurate and misleading. The draft was very opinionated by this committee and your findings hurled stones of wrath not only on our police department but all forms of government - local, state and federal.

Ninety-five percent of your interpretations made in this report were your opinions and your judgment but they were not based on facts.

Everyone has an opinion and a person can be wrong about his opinion, but no person has the right to be wrong about the facts. Facts speak for themselves. Opinions are just like noses - everyone has one.

On pp. 3.20 - It states that all M.P.A. officials are kept on full salary by the Memphis Police Department. This statement is wrong!

On pp. 3.21 - It states that I said that there were not any promotions during a 7 year span. You deny that this information is accurate.

I stated that we went for a period of 7 years without promotions except the police officers in top management level.

On pp. 5.3, it states that the police enter homes as if they owned them without benefit of a warrant or anything. This statement is false.

1255 LYNNFIELD ROAD / SUITE 131 / MEMPHIS, TENNESSEE 38138 / (901) 761-2770

On pp. 5.9, Mr. Ewing stated that "there is pressure put upon police recruits by certain veteran officers to become a part of an invisible system of doing things that is not a part of any formal, structured record in the police department". Mr. Ewing also stated that "new officers are encouraged to say nothing". This statement is 100% wrong. There is not any pressure on the recruits and they are certainly not told to "say nothing".

There are many repetitious paragraphs in this draft. For instance, on pp. 5.16 and 7.3, regarding the use of deadly force.

On pp. 5.21, next to the last paragraph, pp. 5.24, and 5.25 are all based on opinions with no facts to back these statements.

On pp. 5.26, it states that Mr. Thompson offered his belief that the M.P.A. contract with the City severely restricts Director Chapman's options in investigating complaints against police officers. In what way do we hinder any type of investigation?

On pp. 5.32, there were no facts regarding this entire page, only one person's word against another.

The next to last paragraph on pp. 6.11 is totally inaccurate.

On pp. 6.15, second paragraph, "the IAB is required by terms of the union contract to discontinue investigation of the complaint subject to a criminal investigation branch." The facts of this paragraph are wrong and you corrected this on pp. 6.16, next to last paragraph.

On pp. 6.27, last sentence to top paragraph states, "there is virtually no question that a prosecutor will be unable to prove guilt beyond a reasonable doubt." My comment to this statement is that a person is innocent until proven guilty.

On pp. 6.28, third sentence in last paragraph states, "The Memphis Police Department - the entire community - cannot afford to ignore any reasonable means for making Memphis police officers accountable for their conduct in the performance of their awesome public trust". I agree totally with this statement but who says a polygraph is reasonable?

On pp. 6.29, last paragraph states, "the Union contract provision is clearly at odds with the effective utilization of citizens' complaints as set forth in this statement." This statement is clearly your opinion and is false.

On pp. 6.33, first paragraph, states that the "police officer will have the information necessary to take retaliatory action against the complaintant. Obviously, the M.P.A. was aware of this fact when they successfully obtained this provision in the Union contract." We have never had police officers to retaliate against any complaintants and this statement makes our police union look like the Mafia. I resent the insinuation that you make.

Pp. 6.34, second paragraph, "the facts are that this Union contract provision does serve to discourage citizens from filing complaints of misconduct". This is another of your opinions with no facts to back up the statement.

On pp. 6.47, last sentence of first paragraph where, "two police officers who were fired for beating a prisoner (breaking both his arms) brought criticism from Director Chapman and a local newspaper." The facts, which were presented to the Civil Service commissioners showed that the prisoner was not beaten but only the amount of force necessary to subdue the prisoner was used. Because Director Chapman or a local newspaper criticized the Board of Commissioners doesn't mean that the board was wrong.

On pp. 7.3, first paragraph, concerning the statistician and his analysis about 'rare' being the factor in these statistics means in his opinion which is different from the facts. Just because his analysis is one thing doesn't mean that he is absolutely right or sure.

In the initial form letter that you sent with each one of the drafts was self-explanatory information. You stated that the factual information on which your findings and recommendations were accurate. Many of your findings were inaccurate, misleadin and definitely opinionated.

From the first page to the last, this draft report inferred negative, distasteful opinions not based on facts but slanted to show a picture of gloom. You low-rated nearly everyone who works in law enforcement, whether local, state, or federal and insinuated that we were the problem and not the lawbreakers.

Not once were you positive or did you give any solutions. The door was left open for you to give constructive criticism but for some reason this report does not reflect your theories on this.

You have shown a picture of hatred between the minorities and the police and this is wrong. Our police union has worked extremely hard to gain credibility with our community because we are proud to have the opportunity to live and work in Memphis.

Your draft concludes and presumes the idea that police officers are very arrogant, impersonal, and unprofessional and I resent this slanted biased opinion of this draft. Our police officers are human beings also with the same constitutional rights that everyone shares, regardless of race, color, or creed.

Ninety percent of this draft spoke in terms of generalities rather than specifics.

You have deliberately tried to show hostility among minorities and the police.

If I had to size this complete draft into a few short paragraphs, I would have to say that you have intentionally tried to show that the police lack positive qualities, have a very pessimistic outlook on life, and are not concerned with the welfare of our citizens.

You can color ninety five percent of this draft with bitterness, hatred, irritation, insults, alienation, hostility, animosity, and a feeling of trying to excite the community against law enforcement.

I think that your objective was to try to suggest to the public a way of viewing our police department with horror, a lack of trust, and the connotation that the police department whitewashes everything.

A good defense is a strong offense and you have been very offensive, dogmatic, and speculative in your viewpoints.

Joe

JOE KENT, PRESIDENT
MEMPHIS POLICE ASSOCIATION

cls

cc: Mayor Wyeth Chandler
Director E. Winslow Chapman
Joe Sabatini
Henry Evans
Chief Mickey Jones

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D. C. 20531

NOV 16 1977

RECEIVED
NOV 21 1977

Mr. Bobby D. Doctor
Regional Director
Southern Regional Office
U.S. Commission on Civil Rights
75 Piedmont Avenue, Room 362
Atlanta, Georgia 30303

Dear Mr. Doctor:

Thank you for forwarding the draft report Civic Crisis, Civic Challenge to this Office for review and comment prior to final publication, which document was received October 25, 1977.

As you know the LEAA was established within the Department of Justice and is controlled by the Omnibus Crime Control and Safe Streets Act of 1968, as amended. LEAA's Office of Civil Rights Compliance, therefore, necessarily and appropriately coordinates with the Department of Justice Civil Rights Division and other Federal agencies such as Office of Revenue Sharing in establishing policy and, to the extent possible, avoids duplication of effort in matters of concern to each.

As the report states, the civil rights provisions of the Act are inclusive of, but broader than, the provisions of Title VI of the Civil Rights Act of 1964. The Crime Control Act of 1976 which became effective October 15, 1976 substantially increased the civil rights compliance responsibilities of LEAA and required the early adoption of regulations (within 120 days) for the implementation of its provisions.

It would appear that the statements found at page 8.2 concerning the scope of the regulations issued on February 16, 1977 and also the activities of this office are seriously understated (a copy of the regulations is enclosed herewith for your information). They do contain provisions for suspension and termination of Federal funds (the term "withholding" is inaccurate), however, they also provide strict timetables for the investigation and resolution of complaints and the conduct of civil rights compliance reviews and establish the priorities for conduct of such reviews.

The Office has, with minimal staff, established a broad program of activity which is substantially more than "basically an oversight of equal employment guarantees and contract compliance".

During the past fiscal year this Office has satisfactorily resolved 423 complaints of alleged discrimination. Although the vast majority of these complaints were related to employment matters, there were also a substantial number that related to allegations of discriminatory treatment in the provision of services. In addition, we conducted pre-award reviews of 32 discretionary grants (all LEAA direct grants in excess of $500,000). These reviews include all aspects of civil rights compliance related to the program under consideration.

Substantial amounts of technical assistance has been made available by staff and through grants and contracts providing assistance to numerous recipient agencies in the areas of minority recruiting, testing and preparation of appropriate equal employment opportunity programs, inasmcuh as education is certainly a most viable tool for achievement of our mutual goal of assuring the civil rights of all citizens. Specifically, Unversity Research Corporation provides technical assistance in preparation of equal employment opportunity programs and training of EEO personnel at the state and local level; the National Urban League, through its Law Enforcement Minority Manpower Project, provides recruitment, training for tests and assistance in retention of minorities and women in the criminal justice system; the Industrial Relations Center, University of Chicago is working on construction and validation of entrance level examinations for selection of police officers; the Marquette University Law School Center for Criminal Justice Agency Organization and Minority Employee Opportunities provides services of employment practices evaluation, recruitment evaluation and implementation and training at operating criminal justice agencies; the International Association of Official Human Rights Agencies will conduct training of state and local civil rights organizations and coordinate LEAA's compliance program with those of the HCR's; and the National Center for State Courts provides technical assistance training and research into the equal employment concerns of the state court systems.

Notice letters of non-compliance have been sent to Governors and chief executives of local government with respect to findings concerning the following agencies: Cleveland Police Department, Iowa Men's Reformatory, San Francisco Police Department, Wisconsin Council on Criminal Justice, Jefferson County, Alabama (five municipal police departments affected), New York City Police Department, Denver Police Department, Alabama Department of Corrections, Kentucky State Police, New Orleans Police Department, Des Moines Police Department and Cedar Rapids Police Department. The foregoing have all been triggered by either Court decision, State administrative findings or LEAA investigation. In addition, notices have been sent related to litigation initiated by the Attorney General against the following agencies; Illinois Department of Corrections, Virginia State Police, San Diego County, Jefferson County, Alabama Jail, Los Angeles Police Department and Cook County, Illinois Department of Corrections.

Further, inasmuch as the responsibility for monitoring of construction contractors has been shifted to GSA the Office is gearing up to conduct one compliance review a month. Among those under consideration for review at the present time are Dade County Department of Public Safety and the Nashville, Tennessee Police Department.

It is expected that the research presently being conducted by the Civil Rights Division will provide insight and guidance with regard to the issue of police brutality. LEAA will pursue the question, with the Civil Rights Division, and take appropriate action in accordance with departmental policy when it has been clearly defined.

Sincerely,

Lewis W. Taylor, Director
Office of Civil Rights Compliance

Enclosure

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D. C. 20531

RECEIVED
NOV 28 1977

NOV 23 1977

Mr. Bobby D. Doctor
Regional Director
Southern Regional Office
U.S. Commission on Civil Rights
75 Piedmont Avenue, Room 362
Atlanta, Geogia 30303

Dear Mr. Doctor:

Please be aware that the American Civil Liberties Union in a publication dated July 20, 1977 stated that the Law Enforcement Assistance Administration (LEAA) civil rights program has greatly improved since the enactment of the Jordan Amendment. I hope that the updated information we are forwarding to you concerning LEAA will be reflected in your final report.

It is my sincere desire to keep the proposed cities identified for possible compliance reviews confidential until a final decision has been made and the recipients notified.

Sincerely,

Lewis W. Taylor

Lewis W. Taylor, Director
Office of Civil Rights Compliance

City of Memphis
Tennessee

WYETH CHANDLER
MAYOR

November 29, 1977

RECEIVED
DEC 2 - 1977

U. S. Commission on Civil Rights
Southern Regional Office
Citizens Trust Company Bank Building
75 Piedmont Avenue
Room 362
Atlanta, Georgia 30303

Gentlemen:

From the opening paragraph in the preface to the final paragraph of the report itself, the document purporting to be an extensive overview of police-community relations in Memphis, Tennessee, is a totally biased, politically motivated and childishly written work written under the direction and control of an employee of the Federal Government with his own personal axe to grind.

I would suggest to the membership of the U. S. Commission on Civil Rights that they first look deeply into the background of Bobby Doctor to ascertain whether he has ever had personal dealings with members of the Memphis Police Department that have colored his thinking and analysis. I would then demand that the Commission on Civil Rights look into the lives of all the black leaders who gave testimony before them to ascertain their political motives in so doing. They will find clearly that it has been the hope and desire of those so-called leaders to have themselves and their brothers elected to the leadership in the community and that these hearings are nothing more than an intrusion by a Federal commission into the local political scene. Surely this is not the intent of the civil rights legislation!

It is absolutely true that I termed the Tennessee Civil Rights Commission members a "bunch of weirdos". In my opinion, they are and worse. But it was not on that account that I refused to cooperate with them. I cooperate with "weirdos" every week.

Bobby Doctor came to Memphis and to my office to state that he wanted to help Memphis with its police-black community problems. He stated that your hearings would be held, that we would receive prior information about those who would testify, that we could question witnesses and that he would cooperate with the City's leaders in every way to keep the procedures orderly and fair.

We agreed to cooperate.

CITY HALL - 125 NO. MAIN - MEMPHIS, TENNESSEE 38103

Before twenty-four hours had passed he had made a statement, published throughout the country that he had received more complaints regarding police brutality from Memphis citizens than from all of the other southern cities combined. I called him personally in Atlanta whereupon he admitted that he had lied; that he had no complaints from Memphis citizens with regard to police brutality, but had received a lot of second-hand complaints from Reverend Samuel Kyles, a close personal friend of his who held the position of Chairman of the Tennessee Commission on Civil Rights.

Reverend Samuel Kyles has a long history of political activity in the community. Most of this activity consists of stirring up black support for innumerable "causes", all inuring to his personal financial benefit. His status among intelligent blacks and whites in the city is nil.

Bobby Doctor at this time notified me that we would not have an opportunity to cross examine witnesses testifying against the police department and made it manifestly clear that the purpose of this exercise was to embarrass this administration and the leadership and membership of the Memphis Police Department.

I, under these circumstances, did indeed refuse to cooperate and will continue to do so.

I will not attempt to answer the numerous errors in those sections dealing with the demographics or economics of the city. Whether true or false, they are of no concern to the Civil Rights Commission.

I will only say that the statements attributed to Councilmen Todd and Alissandratos on Page 2.5 that the investigation of the Memphis Police Department by a three-man committee in 1972 was "incomplete" due to actions taken by me is an outright lie.

The historical perspective on the Police Department appears reasonably accurate. It seems incredible, however, that the staff report dwells on the number of black officers without emphasizing the drastic increase in both numbers and percentages made by blacks during this administration and made before the settlement with regard to hiring goals between the Justice Department and the City.

The report talks of the Special Officers in the Housing Projects, but fails to mention that this was done at my instigation upon the request by blacks living therein.

Other blatant examples of false testimony given before the Commission and accepted as fact include the following:

Page 4.26 - The report states "it was a grave injustice to the people of Memphis and the city government that the Civil Rights Division and the Community Relations Service of DOJ did not consult with one another about the Consent Decree which was being negotiated between the City and the Civil Rights Division". This statement is not true since Gerry George and the mediator from Community Relations Service did consult with each other prior to the conclusion of the negotiations on the Consent Decree, and Mr. George had at least two meetings with representatives of the citizen group prior to the signing of the Consent Decree.

Page 4.33 and Page 8.3 - Reference is made to discriminatory practices in employment and promotions since the entry of the Consent Decree in 1974. On Page 4.33, the statement is made that "the Consent Decree has become a focal point of frustration for many, including those persons whose rights it ostensibly protects". If the comments on these two pages are factual, and I don't believe they are, there would have been charges filed against the City for having violated the Court order. There have been none. There are several glaring errors in dates on the report which are designed to imply actions by individuals as being part of the overall negative attitude which is carried throughout this report.

Page 4.2 - Frank Holloman is identified as Director of Police from 1968 to 1972. In actuality, Holloman resigned as Director in mid 1970.

Page 4.9 - It is noted that Mayor Chandler and Jay Hubbard, who served as Director of Police in 1972, did not release certain records which were requested by the investigating team. This is apparently information released by Council members Todd and Alissandratos, but it should be noted that Jay Hubbard was not even appointed as Director of Police until December 1, 1972.

Page 5.48 - An attempt is obviously made to link the death of Elton Hayes to the period during which Wyeth Chandler was Mayor. On this page, Elton Hayes' death is alleged to have occurred in 1974 and, in reality, it occured in October, 1971.

Page 5.60 - It is noted that Wyeth Chandler has been Mayor since 1970 when, in fact, he was inaugurated on January 1, 1972.

Page 6.44 - The report notes that the Community Relations Commission

> Commission was formed in February, 1972, following the death of Elton Hayes, but, in reality, the CRC was formed by the City Council in November, 1972 and its first director was appointed by Mayor Chandler in January, 1972.

There are other similar errors throughout the report, but I believe it is apparent from these that considerable liberty has been taken with information in this report in order to make events and times seem to be something they were not.

The keynote of the entire report is the section alleging police brutality. As a practicing attorney for over twenty years, I can state without equivocation that only a fool would attempt to find the City guilty of anything based on that hodgepodge of unsubstantiated tripe.

Let us simply summarize that section by saying there was not one single instance cited where there was proof that a citizen of this city was brutalized by a policeman when appropriate disciplinary action was not taken by the Memphis Police Department.

I might also add that in spite of the fact that there was a tremendous amount of publicity given to the holding of the hearing by the U. S. Commission on Civil Rights and there was a concerted effort by the black leaders of Memphis urging citizens to appear before this group with complaints, only fifteen (15) complaints were filed with the Commission.

Out of the fifteen (15) complaints filed, only eleven (11) complainants appeared and testified and out of the eleven (11) appearing, eight (8) had filed complaints with the Internal Affairs Bureau of the Police Department. One of the eleven who had appeared had previously dropped the complaint with IAB and one had not returned to sign the complaint.

This would hardly bear out that the complainants in our city are afraid to bring complaints to the Police Department membership.

I would suggest that the U. S. Commission compare the complaints with the charges that were made and they would see without an equivocal doubt that they will not be able to recognize the incidents involved as being the same.

Finally, I would point out there were only eleven (11) complaints alleging police brutality brought before the Commission, having heard from a city with a population of 700,000 of which some 40% are blacks.

I consider it overwhelming evidence that where thousands of the citizens that are dealt with are blacks, that alone is clear and convincing evidence that the Police Department of this city is performing its function in a way that deserves the plaudits and appreciation of any clear thinking and fair minded fact finder.

Verbiage such as "thousands of complaints were filed", "I've seen the results of brutality", and such statements by witnesses are hardly the type of evidence upon which either a person or a community can stand convicted. Yet, it would appear that the draft report bases its ultimate determination upon just such a weak foundation--all of which shows clearly and convincingly that lack of legal training and a predisposition to find guilt have joined together to make a mockery of the Commission's report.

I should note in passing that the use of deadly force in shooting fleeing felons who (a) have been warned and (b) would escape apprehension unless deadly force was used, is, indeed, my policy and to that I intend to adhere unless and until either legislative or judicial decisions should change the law. Any attempt to change this policy by threats as to what this Commission will report or recommend will be considered blackmail and met with firm resolve not to bow to such tactics.

Finally, the draft report condemns all activities by Federal agencies passing Federal dollars on to the government of this city. In fact, the staff report condemns just about everybody and every group except the black political organizations in Memphis--the Mayor, the Council, the Police Director, the business leadership, the religious leaders, the Justice Department, the Federal and State Attorneys General, the citizens of Memphis. Only the black leadership and perhaps by inference, the criminals who daily stalk the streets raping, killing, maiming, robbing and terrorizing, are held in high esteem by this group of our educated drones.

The final conclusion that police misconduct is pervasive and uncontrolled in this city is a product of the personal vendetta of Bobby Doctor and the wild imaginings of his coterie.

If this report should be given the blessing of the U. S. Commission on Civil Rights, it will be a tragic day for this nation. A group of Americans appointed to protect the rights of all Americans will have been used by one group to persecute another without the basic elements of truth, of corroborated facts or of fair and impartial hearing. Justice will go unserved and the days of this nation will be numbered.

Sincerely,

Wyeth Chandler

WC:mh

CITY of MEMPHIS

WYETH CHANDLER
MAYOR

DIRECTOR OF POLICE SERVICES
128 ADAMS AVENUE
MEMPHIS, TENNESSEE 38103
PH. 901-528-2200

December 6, 1977

RECEIVED
DEC - 9 1977

Mr. Bobby D. Doctor
Regional Director
United States Commission on Civil Rights
Citizens Trust Company Bank Building
75 Piedmont Avenue, Room 362
Atlanta, Georgia 30303

Dear Mr. Doctor:

In overall regard to the report, it would appear to me that it paints with a very broad brush many of the problems which beset this community, the Memphis Police Department and the relationship between the two without truly addressing itself to solutions. In regard to the preface alluding to the two incidents, circumstances make a great difference in an officer's reaction. In the case of a fleeing felon, at night under these circumstances, it would be impossible to tell if the individual was sixteen or thirty-six or to tell what crime had been committed or if the individual was armed.

On Page P-4, it was not asked nor did I promise City Council to appear before the Commission. I came because I had hoped for positive, substantive suggestions to correct an obviously bad situation.

I agree wholeheartedly with the sentiments expressed on Pages 1.1 and 1.2.

On Page 1.2, I would submit that for my part I have been willing to exercise my responsibility and authority to improve this situation. My record will substantiate this.

On Page 3.3, the promotion of the first black precinct commander is mentioned. This was my choice and my action.

On Page 3.17, you refer to a lack of training in human behavior. The employment of a Staff Psychologist by my administration has resulted in a great expansion in this area as well as the testing and detection of problem or abnormal behavior. This also applies to the reference on Page 3.18 to In-Service Training, which has also been revised in this respect.

Page Two. December 6, 1977

Mr. Bobby Doctor

On Page 4.3, you note that I have no police experience. Four years as a Military Police Captain and six years as a Reserve Sheriffs Deputy is some degree of experience.

In regard to the 18 Point Program mentioned on Pages 4.3-4.5, I would submit the following points. 1, 3, 4, 5, 7, 12, 16, and 18 are already being done or being studied for implementation with some degree of modification. Point two would involve a Charter change. Point Six has been tried, but because of funding and administrative problems was dropped (this is not a police administrative item). Points eight, nine, ten and eleven would not be feasible because of the availability of qualified blacks. Our present class of eighty has been cut to less than sixty because of this, despite recruiting efforts. Number thirteen would be a city administrative Council action. Points fifteen and seventeen involve state law and the revision thereof.

On Page 4.6, in regard to the findings submitted in January, 1973, to the City Council the wording could have been my own. I have stated these problems many times publicly. There is great improvement in all three areas and an elimination in part of one.

On Page 4.8, I agree with the recommendations and all three have been implemented.

On Pages 4.12 and 4.13, the entire operation of Internal Affairs has been revised, which includes almost all of the critical points on these pages plus some additional.

On Page 4.14, the hiring of a Staff Psychologist addressed the items in Paragraph Two and the increase in firearms training has been completed in revised form.

Almost all items covered on 4.17-4.23 have been covered with the majority having been implemented in the past year.

On Pages 4.31 and 4.32, the proposed new system of promotion which is presently being reviewed by Federal Court and the Justice Department, subsequent to being implemented by this department, should address all of the shortcomings on these two pages.

Mr. Bobby Doctor

As per Mrs. Smith's statements on 5.2, I appreciate the difficulty of the position of the NAACP. All complainants naturally wish to seem as aggrieved as possible to warrant attention. By the same respect. officers would naturally claim to be as innocent of anything as possible. Much more could be accomplished if the NAACP would join with this office in an effort to engender a feeling on the part of the officers that unwarranted and unfounded claims will be weeded out while those with merit will be pursued with vigor by both the department and the community. This can only result from working together, rather than as adversaries.

The statement attributed to Mrs. Smith on Page 5.5, footnote 30, is so blatantly untrue that I find it hard to believe this is correctly quoted.

On Page 5.9, I would submit that Mr. Ewing's statements could no longer be substantiated.

The individual complaints noted on Page 5.30-5.33 have been catalogued for the Mayor and will be a part of his answer. The information regarding these complaints, as included in the report, is fallacious.

On Page 6.10 and 6.11, the figures are erroneous. Forth-four officers were fired between January, 1974 and March, 1977. In addition, eight others have been fired since then.

On Page 6.40, Inspector Wilkinson was reassigned relative to the overall performance of Internal Affairs and a question in my mind as to the lack of aggressiveness in following up some investigations. This included some specifics in favor of complainants, which will not be released herein.

Sincerely,

E. Winslow Chapman
Director of Police Services

EWC/jtw

* U.S. GOVERNMENT PRINTING OFFICE : 1978 0-725-422/521